

DATED

(1) WEST SUSSEX COUNTY COUNCIL

and

(2) WEST SUSSEX PRIMARY CARE TRUST

AGREEMENT

**SECTION 75 NATIONAL HEALTH SERVICE ACT 2006
PARTNERSHIP AGREEMENT**

**IN RESPECT OF
JOINT COMMISSIONING
FROM
A POOLED FUND AND FROM NON POOLED FUNDS
FOR
ADULTS' AND CHILDREN'S SERVICES**

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THIS AGREEMENT is made on the..... **BETWEEN WEST SUSSEX COUNTY COUNCIL** ("the Council") situatedof the one part and **WEST SUSSEX PRIMARY CARE TRUST** ("the PCT") situated at of the other part.

WHEREAS:

- A The Council is a local authority providing care services to members of the public in West Sussex.
- B The PCT is an NHS trust commissioning health services for members of the public in West Sussex.
- C. The parties wish to enter into this Agreement pursuant to the power contained in Section 75 of the Act (and the Regulations) which enables the parties to integrate the commissioning of their respective services. The parties believe that entering into this Agreement is likely to lead to an improvement in the way the parties' respective functions, as set out at Schedule 2, are exercised.
- D This Agreement is intended by the Partners to establish a commissioning arrangement incorporating management of both:-
 - a Pooled Fund; and
 - specified Non Pooled Funds for NHS health care and Council health related Care;
- E The parties agree that this Agreement replaces and supersedes any previous agreement entered into by the parties under Section 75 of the Act or Section 31 of the Health Act 1999.
- F This Agreement follows consultation jointly by the Parties with such persons as appear to the Parties to be affected by these Arrangements and these Arrangements contribute to the fulfilment of the objectives set out in the Health Improvement Plan as required under the Regulations.
- G The Parties intend that this Agreement shall facilitate the transition from PCT commissioning to commissioning by GP consortia in accordance with the provisions of the Health and Social Care Bill 2011.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except where the context otherwise requires, the following expressions shall have the meanings respectively ascribed to them:-

"Act" means the National Health Service Act 2006;

“Agreement”	means this Agreement and its Schedules and any variation from time to time agreed between the Parties;
“Annual Commissioning Plan”	means the plan prepared by the Pooled Fund Manager of the Council setting out the commissioning intentions for the Services in respect of each Financial Year and to be agreed by the Joint Commissioning Board; This shall include any objectives for change to Service delivery or expenditure arrangements which shall have regard to the Children and Young People Plan, any Adult Services Plan of the Council and the Strategic Commissioning Plan of the PCT and which is to be implemented by the Council on behalf of the Parties in the Financial Year. The Annual Commissioning Plan will incorporate the Revised Annual Finance Agreement and revision to the Schedules 1, 3, 4, and performance framework here appended at Schedule 5 as required;
“Annual Finance Agreement”	means the statement of Council Financial Contributions and PCT Financial Contributions prepared and presented to the JCMG by 31 December in each Financial Year in respect of the following Financial Year;
“Annual Summary”	means the list of policies of the Council, insofar as it has a statutory duty to make such policy, that has an impact upon delivery of the Service;
“Arrangements”	the establishment and operation of the “Section 75 partnership arrangements” described in this Agreement;
“Authorised Officers”	means the person notified by each of the Parties to the other from time to time as authorised to act on behalf of that Partner for the purposes of this Agreement (which person shall until further notice be for the Council its Chief Executive and for the PCT its Chief Executive);
“Budget”	means the combined Council Financial Contributions and PCT Financial Contributions in respect of a single Financial Year;

"Care Contract"	means a contract between the Council and any third party for the delivery of the Service or any part thereof to any Service User;
"Children & Young People Plan"	means the plan for improving Children and Young People services and outcomes as agreed annually by the Relevant Partners as defined in the Apprenticeship Skills and Learning Act 2010;
"Commencement Date"	means 1 April 2011;
"Common Assessment Process"	means the assessment framework involving a lead professional role used by the Council and the PCT jointly to assess the needs of prospective Service Users in accordance with national requirements and Guidance or Directions relevant to the provision of the Service or any part thereof as may be issued to the Council or PCT from time to time;
"Council"	means the West Sussex County Council and any successor authority;
"Council's Financial Contributions"	mean the Council's financial contributions to the Arrangements which, for the Financial Year 2011/12, shall be the sums identified in clause 4.2 and clause 4.4 unless agreement has been reached in accordance with clause 9.2. For subsequent Financial Years contributions, shall be calculated in accordance with Clause 9.2 and recorded in the Annual Finance Agreement for that Financial Year.
"Council Functions"	means those of the Council's health related functions set out in Schedule 3, and as amended from time to time;
"Financial Year"	means the financial year from 1 st April in any year to 31 st March in the following calendar year;
"Health Improvement Plan"	means the local NHS Health Improvement and Modernisation Plan which applies locally to the PCT prepared pursuant to the Act or any other plan known to incorporate the Health Improvement Objectives including the Children and Young People Plan for West Sussex and the Strategic Commissioning Plan of the PCT;

“Joint Commissioning”	means the partnership arrangements managed by the Joint Commissioning Unit and JCMG as directed by the Joint Commissioning Board;
“Joint Commissioning Board”	means the body responsible for oversight of the Arrangements as set out in Schedule 5;
“Joint Commissioning Unit”	means the group of staff working to the Annual Commissioning Plan, as overseen by the JCMG;
“JCMG”	means the Joint Commissioning and s75 management group to be constituted and responsible for the day-to-day management of the Service in accordance with the provisions of Schedule 5;
“Law”	any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgment or determination with which the Council and/or the PCT is bound to comply including the Council’s rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time;
“Non Pooled Funds”	means the monies to be available in order to purchase those parts of the Service not within the Pooled Fund and for which there shall be two (2) funds, with one (1) provided by the Council for the purposes of purchasing Council health related care (the “Non Pooled Fund for Social Care”) and one (1) provided by the PCT for the purposes of the Council securing on its behalf NHS health care (the “Non Pooled Fund for Health Care”) in accordance with the functions delegated according to the jointly agreed aims, objectives and plans set out in this Agreement;
“Non Pooled Fund for Health Care”	means the fund of monies provided by the PCT for the purposes of purchasing NHS health care;
“Non Pooled Fund for Social Care”	means the fund of monies provided by the Council for the purposes of purchasing Council health related care;

"Parties"	means the Council and the PCT, and the term "Party" shall mean either one of them;
"PCT"	means NHS West Sussex, the working name for West Sussex PCT (and any successor to its statutory functions);
"PCT Contracts"	means the contracts entered into by the PCT in respect of the PCT Functions or pursuant to the Previous Partnership Arrangements before the Commencement Date, as listed in Schedule 8 (PCT Contracts);
"PCT's Financial Contributions"	means the PCT's financial contributions to the Arrangements which, for the Financial Year 2011/12, shall be the sums identified in clause 4.1 and clause 4.3 unless agreement has been reached in accordance with clause 9.2. For subsequent Financial Years, contributions shall be calculated in accordance with Clause 9.2 and recorded in the Annual Finance Agreement for that Financial Year.
"PCT Functions"	means those of the PCT's statutory functions as are listed in Schedule 3, and as appended from time to time;
"PCT Staff"	means the PCT employees engaged in commissioning services pursuant to the PCT Functions before the Commencement Date, and who will be seconded to the Council from the Commencement Date, as agreed between the Parties;
"Pooled Fund Manager"	means the person determined from time to time under Clause 7.2 and who will at the outset of this Agreement be the Council's Principal Manager for Planning and Contracting;
"Pooled Fund"	means a pooled fund established by the Parties in exercise of their powers under Regulation 7 of the Regulations for revenue expenditure incurred in the exercise of both PCT and Council Functions and which comprises the Financial Contributions identified in the relevant Annual Agreement;
"Prescribed Functions"	means the Council Functions and the PCT Functions;

"Revised Annual Finance Agreement"	means the written confirmation of the Annual Finance Agreement setting out the parties' financial contributions and any change in procedures for operation of the Agreement as set out at Schedule 4
"Regulations"	means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, S.I. No. 617;
Relevant Partners	means the 'Relevant Partners' as prescribed in the Children Act 2004 (as amended by the Adult Skills Children and Learning Act 2009);
"Services"	means provision of health and social care services for adults and children and young people funded from the contributions of the Parties to the Pooled Fund and the Non Pooled Funds as commissioned by the Council according to the Aims and Objectives at Schedule 1 and in the manner and locations specified in Schedules 3 and 4 (or such equivalent alternative service as the Parties may agree from time to time.) A non exhaustive list of examples of the Services is attached at Schedule 3;
"Service User"	means any person receiving the benefit of the Service;
"Strategic Commissioning"	means the plan of the PCT which sets out its proposals for improving health and delivery including an annual plan;
"Term"	means the period from the Commencement Date expiring on 31 March 2014, unless extended in accordance with clause 2.2, and subject to earlier termination in accordance with the terms of this Agreement.

1.2 Save to the extent that the context or the express provisions of this Agreement otherwise require: -

1.2.1. references to any gender include any other gender and words in the singular include the plural and words in the plural include the singular;

1.2.2. references to any Statute or statutory provision shall be deemed to refer to any modification or re-enactment thereof for the time being in force whether by Statute, Regulation, Guidance, Direction or Directive which is intended to have direct application within the

United Kingdom and has been adopted by the Council of European Communities;

- 1.2.3. headings and the Index are inserted for convenience only and shall be ignored in interpreting or in the construction of this Agreement;
- 1.2.4. references in this Agreement to any Clause or Sub-Clause or Schedule or Appendix without further designation shall be construed as a reference to the Clause or Sub-Clause of or Schedule or Appendix to this Agreement so numbered;
- 1.2.5. any obligation on either of the Parties shall be a direct obligation or an obligation to procure as the context requires;
- 1.2.6. any reference to "indemnity" or "indemnify" or other similar expressions shall mean that the relevant Partner indemnifies, shall indemnify and keep indemnified and hold harmless the other Partner; and
- 1.2.7. any reference to a person shall be deemed to include any permitted transferee or assignee of such person and any successor to that person or any person which has taken over the functions or responsibilities of that person but without derogation from any liability of any original Partner to this Agreement.

2. TERM

- 2.1. This Agreement shall commence on the Commencement Date and shall continue for the Term, subject to earlier termination as provided below.
- 2.2. No later than [three (3)] Months before the end of the initial Term the Parties may extend the Term by a further period or periods by agreement in writing (an "**Extension**").
- 2.3. Unless otherwise agreed, any such Extension shall be on the same terms as this Agreement and the parties shall, as soon as practicable meet to discuss and negotiate and use all reasonable endeavours to agree any changes to the Agreement as necessitated by reason of such Extension.

3. DELEGATION OF FUNCTIONS

- 3.1 The Arrangements are to comprise:
 - 3.1.1 the delegation by the PCT of the PCT Functions to the Council to enable the Council to carry out the PCT Functions in conjunction with the Council Functions as described in more detail in this Agreement; and
 - 3.1.2 the establishment and maintenance of a Pooled Fund and Non Pooled Funds for agreed categories of revenue expenditure on the Prescribed Functions.

- 3.2 The Arrangements are the mechanism through which:
- 3.2.1 the PCT agrees to delegate the PCT Functions to the Council;
 - 3.2.2 the Council agrees to fulfil the PCT Functions on behalf of the PCT; and
 - 3.2.3 the Pooled Fund and Non Pooled Funds will be established and maintained.
- 3.3 As of the Commencement Date, the Council agrees to establish a Joint Commissioning Unit to commission and provide the Services in accordance with the terms of this Agreement and the Annual Commissioning Plan.
- 3.4 For the purposes of these Arrangements, Council employees may carry out PCT Functions, subject to any restrictions or limitations contained in:
- 3.4.1 the Regulations;
 - 3.4.2 this Agreement; and
 - 3.4.3 any other relevant law and guidance.
- 3.5 Nothing in this Agreement shall affect
- 3.5.1 the liabilities of the Parties to any third parties for the exercise of their respective functions and obligations; or
 - 3.5.2 the powers and/or duty of the Council to set, administer and collect charges for any Council Function; or
 - 3.5.3 the power and the function of the Council to specify and set eligibility criteria for the purposes of assessment under the Community Care Act 1990.
- 3.6 The parties agree to cooperate in order to achieve the Aims and Objectives of this Agreement set out in Schedule 1.
- 3.7 As of the Commencement Date, the previous agreements entered into between the Parties under Section 75 of the Act or Section 31 of the Health Act 1999, as listed in Schedule 7 ("the Previous Partnership Agreements"), are superseded by the provisions of this Agreement and all acts done shall be deemed to have been done pursuant to the provisions of this Agreement.

4. CONTRIBUTIONS

Financial Contributions

- 4.1 The PCT agrees to pay the Council the PCT's Financial Contribution to the Pooled Fund per quarter for the period from 1st April 2011 to 31st March 2012 which shall be £TBA per calendar month, plus any additional sums agreed between the parties in accordance with clause 7.12, unless revised in accordance with clause 9.2.

- 4.2 The Council's contribution to the Pooled Fund per calendar month for the period from 1st April 2011 to 31st March 2012 shall be £..... per calendar month unless revised in accordance with clause 9.2.
- 4.3 The PCT's contribution to the Non Pooled Fund for Health Care per quarter for the period from 1st April 2011 to 31st March 2012 shall be £..... unless revised in accordance with clause 9.2.
- 4.4 The Council's contribution to the Non Pooled Fund for Social Care per calendar month for the period from 1st April 2011 to 31st March 2012 shall be £..... unless revised in accordance with clause 9.2.
- 4.5 The PCT shall make payments identified at Clauses 4.1 and 4.3 above to the Council quarterly on the 15th day of the initial month of the quarter in respect of which the payment is made in accordance with the arrangements at Schedule 4.
- 4.6 From the Financial year 1st April 2012 to 31st March 2013 onwards, contributions from both parties will be calculated in accordance with clause 9.2. The PCT shall make payment of its contributions to the Council quarterly on the 15th day of the initial month of the quarter in respect of which the payment is made in accordance with the arrangements at Schedule 4
- 4.7 The PCT shall make available for use by the Council in support of the Service any other goods or services described at Schedule 4 and which may subject to JCMG agreement be included in the Pooled Fund.
- 4.8 Subject to clause 9.4, the PCT may make variations to the contributions identified at Clause 4.3 subject to notice in writing to the Council of one month.
- 4.9 The Council may make variations to the contributions identified at Clause 4.4 subject to notice in writing to the PCT of one month.
- 4.10 It is agreed that the Council's Financial Contributions at Clause 4.2 and Clause 4.4 will include any sums recoverable by the Council from Service Users in exercise of its power to charge Service Users for certain Services and that no deduction will be made by the Council from the Financial Contributions in the event that it does not or is unable to recover the whole or any part of such charges.

Staffing

- 4.10 The Pooled Fund Manager shall be responsible for ensuring the Joint Commissioning Unit is appropriately staffed.
- 4.11 The provisions of Schedule 6 apply to the secondment or transfer of any PCT Staff to the Council or its service providers.
- 4.12 The costs of providing staff to work on the Services shall be borne by their employer.

Assets

- 4.13 The Parties agree to use reasonable endeavours to contribute or make available such materials, equipment and other assets as shall be necessary for the provision of the Service and in accordance with Schedule 4.
- 4.14 Any assets that are wholly acquired from the Pooled Fund shall be held on trust by the Council for the benefit of the parties jointly and shall be only used by the Council for the purpose of providing the Service and, except as permitted by this Agreement, shall not be written off, disposed of, or put to a different purpose than that for which the funding was intended.
- 4.15 Any assets that are wholly acquired from a Non Pooled Fund shall be held on trust by the Council for the benefit of the Partner which has contributed that Non Pooled Fund and shall be only used by the Council for the purpose of providing the Service and, except as permitted by this Agreement and unless otherwise agreed, shall not be written off, disposed of, or put to a different purpose than that for which the funding was intended.

Premises

- 4.16 The Parties shall be responsible for providing any premises which are necessary for the provision of the Service and in accordance with Schedule 4.

Pre-existing Contracts

- 4.17 The PCT hereby appoints the Council as agent to manage the PCT Contracts from the Commencement Date. The PCT will make available to the Council copies of the PCT Contracts to enable the Council to carry out its role as agent. A list of the PCT Contracts is contained in Schedule 8 but will be subject to such written variations as the parties may agree from time to time.
- 4.18 The Parties agree that, where necessary, and subject to the Council's consent, the rights and obligations of the PCT under the PCT Contracts may be transferred to the Council by way of novation or assignment.

5. NHS HEALTH CARE FUNCTIONS AND COUNCIL HEALTH RELATED CARE FUNCTIONS

- 5.1 The PCT's Functions and the Council's Functions to be carried out (in whole or part) by the Council are set out in Schedule 2.

6. THE SERVICE AND ITS OPERATION

- 6.1 The Council shall be responsible for commissioning the Services on behalf of the Partners from the Pooled Fund and Non Pooled Funds in accordance with the Annual Commissioning Plan.

- 6.2 By 31 March in each Financial Year, the Council shall submit a draft Annual Commissioning Plan in respect of the following Financial Year to the JCMG for approval.

The Council shall provide the Services to the Service Users in accordance with the provisions of Schedule 3.

- 6.3 The eligibility of Service Users to receive the Services shall be assessed in accordance with the provisions of Schedule 3.

- 6.4 The Council shall ensure that in making any decision with respect to a Service User, due consideration is given to the Service User's gender, sexual orientation, religious persuasion, racial origin, cultural and linguistic background, with reference to the Race Relations Act 1976 and the Human Rights Act 1998 and the Data Protection Act 1998 where appropriate.

- 6.5 The Council shall comply with all Statutes, Regulations, Guidance, Directions, Directives and the Annual Summary relating to the provision of the Service or any part thereof and in particular, but without limitation, shall ensure that all Care Contracts require that the provision of the Service complies with any National Minimum Standards under the Care Standards Act 2000.

- 6.6 The Council will provide annually on 1st April of each year the Annual Summary.

- 6.7 The Council may, subject to its Standing Orders and all requirements binding on the Council, enter into such deeds and arrangements (including those with other third party providers) that may in its opinion be necessary to facilitate the provision of the Services in fulfilment of the Council Functions and PCT Functions. Such contracts will be entered into in the name of the Council.

- 6.8 The Joint Commissioning Unit is working towards managing the whole commissioning cycle on behalf of its agreed patient/customer groups. Over time this will include changes to responsibility for contract negotiation and performance management. This will be refined during 2011/12 for contracts for 2011/12 onwards.

7. POOLED FUND AND NON POOLED FUND MANAGEMENT

- 7.1 The Council is the host partner for the purposes of the Regulations for the Pooled Fund and will provide the financial administrative systems for the Pooled Fund and Non Pooled Funds.

- 7.2 The Pooled Fund Manager shall be such officer of the Council as the Council may from time to time nominate for this role and who has been approved by the PCT (such approval not to be unreasonably withheld) and who has been affirmed in the role by the JCMG within thirty (30) days of the commencement of each Financial Year, or (in any other case) the Council's Director of Joint Commissioning.

- 7.3 The Pooled Fund Manager shall be accountable directly to the Council's Director of Joint Commissioning and where the Council's Director of Joint Commissioning is the Pooled Fund Manger for the purposes of Clause 7.2

above, the Director of Joint Commissioning shall be accountable to the Council's Chief Executive.

7.4 The Pooled Fund Manager, or other officer nominated by the Chief Executive of the Council, shall be responsible for authorising payments and the Council shall make such payments from the Pooled Fund and Non Pooled Funds in accordance with the Service description and the Aims and Objectives, as set out in the Schedules to this Agreement.

7.5 The Pooled Fund Manager shall be responsible for managing the Pooled Fund and Non Pooled Funds and forecasting and reporting to the JCMG upon the targets and information in accordance with Schedule 5 and any further targets or performance measures that may be set by the JCMG from time to time.

7.6 The Council shall arrange for the audit of the Pooled Fund and reporting to both the Authorised Officers in accordance with the requirements of the Regulations and any guidance on Audit requirements as directed from time to time. The Council's Authorised Officer shall in turn ensure reporting on the same to the officer of the Council responsible for the administration of its financial affairs.

7.7 Any costs, claims, expenses or liabilities in excess of the Pooled Fund or Non Pooled Funds for the relevant Year shall be agreed in advance by the Parties. The Parties shall take mitigating action as appropriate to ensure expenditure remains within the limit of the Pooled Fund and neither party shall act unreasonably to expose the other to undue financial risk.

7.8 Subject to clause 7.11, save:

7.8.1 to the extent that a party's liability arises pursuant to clause 8;
and/or

7.8.2 to the extent agreed between the parties in writing;

the Parties shall be jointly responsible (in the proportions of their respective contributions of the Pooled Fund for the relevant Financial Year) and individually responsible (for their respective contributions to Non Pooled Funds for the relevant Financial Year for) for any such costs, claims, expenses or liabilities incurred in accordance with the terms of this Agreement.

7.9 Any change to the planning assumptions used to agree the Revised Annual Finance Agreement pursuant to Clause 9 and schedule 5 will be immediately reported to the JCMG and notified to the Authorised Officers by the Pooled Fund Manager. The Parties will take all reasonable steps to ensure that the budget remains consistent with any change to services, outcomes, delivery objectives and/or planning assumptions agreed by the Parties.

7.10 The benefit of any surplus at the end of each Financial Year shall:-

7.10.1 in the Pooled Fund:

- 7.10.1.1 firstly, where the Parties agree, remain within the Pooled Fund to be used to meet such other expenditure as the JCMG may determine,
- 7.10.1.2 secondly, where carry forward is not agreed in full or on part, the benefit shall be distributed to the Parties pro rata to their contributions for the relevant financial year;
- 7.10.2 in the Non Pooled Funds shall be repaid fully to the Partner who contributed the surplus as appropriate.
- 7.11 The Council will take reasonable steps to manage the Pooled Fund and Non Pooled Funds in accordance with the terms of this Agreement so that there is no overspend.
- 7.12 If, at the end of the Financial Year, there is an overspend in respect of the PCT's Financial Contribution to the Non Pooled Fund for Health Care it shall be funded out of the reserves allocated by the PCT for the PCT Functions. If such overspending exceeds the allocated reserves, the Council will invoice the PCT for the relevant sum and the PCT shall be obliged to pay such invoice within 30 days of the date of the invoice.
- 7.13 The Council will be expected to manage any in-year overspend of the Council's Financial Contributions. However, if at the end of the Financial Year, there is an overspend of the Council's Financial Contribution to the Non pooled Fund for Social Care it shall be met by the Council.
- 7.14 The Council shall as soon as practicable following the end of the Financial Year notify the PCT in writing of the indicative amount of any overspend or underspend arising in respect of the Budget.
- 7.15 The Pooled Fund Manager shall submit to the Parties monthly reports as soon as possible after the end of each month but in any event within thirty (30) days of the end thereof and an annual return following the end of each year in line with statutory and local deadlines and requirements regarding the income of and expenditure from the Pooled Fund and the Non-Pooled Funds, reports on performance against budget and targets and other information by which the Parties can monitor the effectiveness of the Arrangements.
- 7.16 The Pooled Fund Manager shall maintain and provide when requested by either of the Parties such information as shall be appropriate to the provision of the Service for so long as any part thereof is being provided to Service Users, notwithstanding any notice of termination in accordance with Clause 10.
- 7.17 The governance arrangements shall be as set out in Schedule 5.
- 7.18 Each Partner shall pay its own costs and expenses incurred from time to time in the negotiation and management of this Agreement, save as expressly otherwise provided in this Agreement (including, without limitation the functions described at Schedule 5).

7.19 The costs of audit associated with the certification of the annual return for operation of this Agreement and the costs of provision of information by the Pooled Fund Manager following a notice of termination shall be a charge to the Pooled Fund.

8. INDEMNITY AND INSURANCE

8.1 The Council shall maintain the Required Insurances with a reputable insurance company in respect of the Service (including but not limited to the indemnities contained herein). On the PCT's request, the Council shall produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

8.2 The Required Insurances referred to above are:

- (a) public liability insurance with a limit of indemnity of not less than fifty million pounds (£50,000,000) in relation to any one claim or series of claims arising from the Service; and
- (b) employer's liability insurance with a limit of indemnity of not less than fifty million pounds (£50,000,000) in relation to any one claim or series of claims arising from the Service;
- (c) fidelity guarantee insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims.

8.2 Notwithstanding any other provision of this Agreement no party shall be liable to the other to the extent that a party is compensated under any insurance policy.

8.3 The Council shall indemnify the PCT and its employees and agents against all claims and proceedings (to include any settlements or ex gratia payments made with the consent of the Parties and reasonable legal and expert costs and expenses) made or brought (whether successfully or otherwise):

8.3.1 by or on behalf of any Service User (or his dependants) against the PCT or any of its employees or agents for personal injury (including death) arising out of the Service;

8.3.2 by the Council, its employees or agents or by or on behalf of a Service User for a declaration concerning the treatment of a Service User who has suffered such personal injury;

8.3.3 (subject to Schedule 6 (Staff Secondment and Transfer)) in respect of any acts or omissions of the Council, its employees or agents in relation to the Service.

8.4 The above indemnity by the Council contained within Clause 8.3 shall not apply to any such claim or proceeding:

8.4.1 to the extent that such liability and/or personal injury (including death) is caused by the negligent or wrongful

act(s) or omission(s) or breach of statutory duty of the PCT, its employees or agents in which case and to such extent the PCT shall indemnify the Council against such claim or proceeding; and/or

8.4.2 to the extent that such liability and/or personal injury (including death) is caused by the failure of the PCT, its employees or agents to carry out their obligations under this Agreement in which case and to such extent the PCT shall indemnify the Council against such claim or proceeding; or

8.4.3 which pre-date the Commencement Date.

- 8.5 The Parties will indemnify and keep indemnified each other against all liabilities arising directly or indirectly from any events, acts or omissions in relation to their respective functions occurring prior to the Commencement Date. Each of the Parties confirms that it has informed the other of any material potential liabilities of which it is aware as at the Commencement Date arising directly or indirectly from any events, acts or omissions of the Partner in relation to those of its respective functions which are relevant to the arrangements set out in this Agreement.
- 8.6 Following receipt of notice of a claim or proceeding which may give rise to an indemnity claim, the Partner in receipt of such notice shall notify the other Partner in writing of the claim or the proceeding and shall, if consented to by the indemnifying Partner (such consent not to be unreasonably withheld, conditioned or delayed), and at the indemnifying Partner's cost, permit the indemnifying Partner (subject to clause 8.9) to have full care, control and conduct of the claim or proceeding ;
- 8.7 Subject to clause 8.8, the indemnity contained in clause 8.5 shall not apply to the extent that a Partner its employees or agents has made any admission in respect of a claim or proceeding referred to in clause 8.6, or taken any action related to such claim or proceeding, which is prejudicial ("prejudicial" to be ascertained in all the circumstances and by the parties acting reasonably) to the defence of such claim or proceeding by the indemnifying Partner without the written consent of the indemnifying Partner (such consent not to be unreasonably conditioned, withheld or delayed).
- 8.8 Admissions or action relating to a claim or proceeding which are taken in strict accordance with the operation of a Partner's internal complaints procedures, accident reporting procedures or disciplinary procedures or where such action or admission is required by law shall not be subject to the exception such out in clause 8.7.
- 8.9 The party taking conduct of the claim or proceeding pursuant to clause 8.6 shall use legal advisers who are approved by the Partner in receipt of the claim or proceeding in writing prior to the legal adviser's instructions (such consent not to be unreasonably withheld or delayed). Each Partner shall keep the other Partner and its legal advisers and insurers where applicable fully informed of the progress of any such claim or proceeding, will consult fully with the other Partner on the nature of any defence to be advanced and will not settle any such claim or proceeding without the written

approval of the other Partner (such approval not to be unreasonably conditioned, delayed or withheld).

- 8.10 Without prejudice to the provisions of Clause 8.6, both Parties will use their reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any such claim or proceedings of which they are directly aware and shall keep each other reasonably informed of developments in relation to any such claim or proceeding even where the indemnified partner decides not to make a claim under this indemnity.
- 8.11 The Parties will each give to the other such help as may reasonably be required including access to staff with relevant knowledge for the efficient conduct and prompt handling of any claim or proceeding by or on behalf of service users (or their dependants) or concerning such a declaration as is referred to in Clause 8.3.2.
- 8.12 For the purposes of this indemnity the expression "agents" shall be deemed to include without limitation any health professional, care worker or manager providing services to the Council under contract for services or otherwise and any person carrying out work for the Council under such a contract connected with such of the Council's facilities and equipment as are made available for the care or benefit of service users.

9. REVIEW OF FINANCIAL CONTRIBUTIONS

- 9.1 The Parties shall use reasonable endeavours in each Financial Year to agree by 31st December draft Annual Finance Agreement for the following Financial Year.
- 9.2 The Parties shall confirm final budgets and any changes to financial procedures by no later than 1st April 2011 and by 31st March in each preceding financial year for the following Financial Year to operate and this shall form the Revised Annual Finance Agreement in the form as described at Schedule 4.
- 9.3 The process of confirming the Revised Annual Finance Agreement at Clause 9.2 shall be conducted in good faith and in accordance with the governance arrangements set out in Schedule 5. The process shall be based upon information provided in accordance with Schedule 5 and shall take account of the planning assumptions and other factors as set out in Schedule 4.
- 9.4 The PCT shall indemnify the Council in respect of any losses (including future losses) incurred by it in connection with commitments made in reliance on the Annual Finance Agreement or the Revised Annual Finance Agreement in respect of the previous year(s) and arising from a reduced PCT Financial Contribution in any subsequent Financial Year. Nothing in this clause 9.4 shall prevent the PCT from amending the Annual Finance Agreement in accordance with this clause 9 or clause 12, or exercising its right to terminate under clause 10.
- 9.5 No provision of this Agreement shall preclude the Parties by mutual agreement making additional contributions of non-recurring monies to the Pooled Fund from time to time but except by mutual agreement no such additional contributions shall be taken into account in the calculation of the

Parties' respective contributions in that financial year for the purpose of Clause 11. Any such additional contributions of non-recurring monies shall be explicitly recorded in JCMG minutes and recorded in the budget statement as a separate item.

10. TERMINATION

10.1 This Agreement may be terminated in whole or in part:

10.1.1 by not less than six (6) months notice from either Party to the other;

10.1.2 if either of the Parties has failed to confirm in writing its respective contribution for the Financial Year 2011/12 by 1st April 2011 in accordance with Clause 9.2; or

10.1.3 if either of the Parties has failed in any subsequent Financial Year to confirm in writing its respective contribution by 1st April in the relevant year in accordance with Clause 9.2.

10.2 If the PCT or the Council fails to meet any of their respective obligations under this Agreement, the other Partner may by written notice require the Partner in default to take such reasonable action within a reasonable time-scale as the first Partner may specify to rectify such failure. Should the Partner in default fail to rectify such failure within such reasonable time-scale, the other Partner may give written notice to terminate this Agreement immediately.

10.3 Either Partner shall be entitled to terminate this Agreement by six (6) months' written notice to the other, if the other Partner, its employees or agents either offers, gives or agrees to give to anyone any inducement or reward or confers any other benefit in respect of this or any other Agreement (even if the Partner is unaware of any such action) or otherwise commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972.

10.4 The Parties may agree to terminate this Agreement in whole or in part on reasonable notice if any part of this Agreement shall become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of the provisions of any Law or any decision of any Court or Regulatory Body having jurisdiction over the parties or this Agreement. If the Agreement is terminated in part, the parties hereby expressly agree that the remaining parts and provisions of this Agreement shall continue in full force and effect with such amendments as are necessary to ensure that the balance of obligations remains so far as possible the same as under the Agreement or as may be agreed between the parties.

10.5 Any purported termination of this Agreement under this Clause shall be without prejudice to any continuing obligations of the Parties under Clauses 7 and 11 and the continued operation of the JCMG in accordance with Schedule 4.

11. EFFECTS OF TERMINATION

11.1 Notwithstanding any notice of termination in accordance with Clause 10:-

- 11.1.1 the PCT and the Council shall continue to be liable to provide the Service in accordance with this Agreement for all Service Users at the date of service of the notice of termination and to fulfil all obligations which are properly incurred pursuant to this Agreement prior to date of service of the notice of termination;
- 11.1.2 the Parties shall remain liable to operate the Pooled Fund and any Non pooled Funds in accordance with this Agreement so far as is necessary to ensure fulfilment of the obligations in Clause 11.1.1; and
- 11.1.3 the PCT shall remain liable to contribute that proportion of the cost of the Service which either is its proportionate contribution in the current Financial Year or, if such contribution has not at the date of notice of termination yet been confirmed under Clause 9.1 or Clause 9.2, the PCT's contribution in the immediately preceding Financial Year represented as a proportion of the aggregate contributions of the PCT and the Council in that preceding financial Year;

such liabilities to continue subject to Clause 11.2

- 11.2 Subject to the foregoing commitments of the Parties, following termination of this Agreement, the Council shall return to the PCT within six (6) months any of the PCT's Financial Contributions which have not been spent on the provision of the Service or any part thereof.
- 11.3 Assets purchased from the Pooled Fund will be disposed of by the Council for the purposes of meeting any of the costs of winding up the Service or where this is not practicable such goods will be shared proportionately between the PCT and the Council according to the level of past contributions to the Pooled Fund.
- 11.4 Any asset purchased from the Non Pooled Funds by the Lead Commissioner on behalf of a Partner from monies contributed to the Non Pooled Funds by that Partner shall immediately become the property of that Partner.
- 11.5 Where part of the Service is terminated, the Parties shall agree any variations to the Agreement necessary to give effect to that partial termination, including any consultation requirements, financial reconciliation and exit management.

12. REVIEW AND VARIATION

- 12.1 The Parties shall review the operation of this Agreement no later than 1st July in each Financial Year.
- 12.2 The JCMG may vary this Agreement by written agreement in accordance with Schedule 5.

13. CONFIDENTIALITY, DATA PROTECTION AND INFORMATION SHARING

- 13.1 The Parties shall:-

- 13.1.1 keep confidential any information obtained in connection with this Agreement and personal Service User data, subject to the Data Protection Act 1998; and
- 13.1.2 take appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of or damage to such personal data.
- 13.2 The PCT and the Council shall keep confidential any information acquired through their conduct of this Agreement and will take all reasonable steps to ensure that their employees, agents and sub-contractors do not divulge such information to a third party, without the express consent of both Parties, except in accordance with the requirements for external audit, as may be required by law or where such information is already in the public domain.
- 13.3 Prior to the issue of any press release or making any contact with the press on any issue attracting media attention that is relevant to the subject matter of this Agreement the JCMG will consult with each other on the release or handling of the issue.
- 13.4 Each party shall provide to the other party such assistance and support which may be requested from time to time for the purposes of enabling or assisting the other party to comply the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (and any replacement or update thereof).

14. DISPUTE AND RESOLUTION

- 14.1 In the event of a dispute over the application or interpretation of this Agreement, the dispute may be referred by the Parties in writing as follows: -
 - 14.1.1 in the first instance to the JCMG to resolve within thirty (30) days; and
 - 14.1.2 in the second instance to the Chief Executives of the Parties who shall endeavour to resolve the dispute within a further thirty (30) days.

15. EXCLUSION OF PARTNERSHIP AND AGENCY

- 15.1 The Parties expressly agree that nothing in this Agreement in any way creates a legal partnership between them.
- 15.2 Neither Partner nor any of its employees or agents will in any circumstances hold itself out to be the servant or agent of the other Partner, except where expressly permitted by this Agreement.

16. ASSIGNMENT AND NOVATION

- 16.1 The Parties may agree to assign or novate this Agreement to another party or parties for the purposes of achieving the Aims and Objectives detailed in Schedule 1.

17. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

17.1 Subject to Schedule 6 (Staff Secondment and Transfer), the Contracts (Rights of Third Parties) Act 1999 has no application whatsoever to this Agreement.

18. PREVENTION OF CORRUPTION / QUALITY CONTROL

18.1 The Parties shall have mutual policies and procedures to ensure that relevant controls assurance, probity and professional standards are met.

18.2 The PCT shall identify and disclose to the Council those policies which the PCT believes are relevant and necessary for the monitoring of service quality and the Council shall ensure adherence to those policies.

19. COMPLAINTS

19.1 Complaints regarding the Service shall in the first instance be directed to the Council and if not resolved will be managed according to NHS Complaints Procedures or the Council's Complaints Procedure as appropriate and this will include information to all Service Users and their Carers or established representatives on how to complain.

19.2 The Council shall ensure that all services provided and arrangements for complaints are in accordance with its policy and that of the PCT for Equal Opportunities and all or any policies and procedures approved by the Council as available through its web site under the Freedom of Information Act 2000.

20. NOTICES

20.1 All notices under this Agreement shall only be validly given if given in writing, addressed as follows: -

20.1.1 if to the Council, addressed to its Chief Executive ; or

20.1.2 if to the PCT, addressed to its Chief Executive.

21. GOVERNING LAW

21.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England.

IN WITNESS whereof the Parties have executed this Agreement as a Deed the day and year first before written.

THE COMMON SEAL of THE COUNCIL)
was affixed to this Deed in the presence of: -)

Authorised Signatory

THE COMMON SEAL of THE PCT)
was affixed to this Deed in the presence of: -)

Authorised Signatory

Authorised Signatory

Draft

SCHEDULE 1 **AIMS AND OBJECTIVES**

Schedule 1 Aims and Objectives

1. Introduction: Description and Purpose of Agreement

1.1 The overarching strategic aims of this Agreement are:

- To ensure through joint commissioning the provision of more integrated health and social care services that reflect the needs and aspirations of people in West Sussex, are of high quality and represent best value.
- To deliver cultural change in commissioning which ensures that the benefits for integrated and person-centred care are realised, supports the development of clinical commissioning, and maximises the opportunity for people and their communities to participate in decisions about their health and social care.
- To ensure that appropriate clinical governance arrangements and expertise are in place to ensure that regulatory requirements are met and evidenced.
- To develop a highly accessible infrastructure to support the effective delivery of commissioning which is hosted by the Council and owned by partner organisations.
- To deliver a robust framework for commissioning which secures ongoing financial stability for partner organisations.
- To facilitate the transition of the commissioning function from the PCT to GP consortia in accordance with the provisions of the Health and Social Care Bill 2011.

1.2 This will enable both Partners to:

- Secure the expertise that delivers strong and robust leadership for the large-scale change required to support sustainability across the whole system for health and social care.
- Establish a meaningful outcome-based framework that maximises the opportunity for improved quality and efficiency of health and social care support services through joint commissioning, and the use of pooled and aligned funds.
- Strengthen and streamline commissioning: promoting clear accountability and responsibility; reducing bureaucracy where possible and ensuring compliance with rules and regulations.
- Ensure the capacity and capability to support innovation in both commissioning and provision, including clinical commissioning and integrated pathways.
- Ensure that relevant clinical expertise is secured throughout commissioning processes from service specification development and included in the selection of providers through procurement and in the ongoing monitoring of delivery of clinical quality outcomes set out in the contract.
- Clarify the level in the organisation at which different services are to be commissioned, with the emphasis on devolving responsibility as close as possible to users and carers.

- Develop and maintain strong and meaningful relationships with provider organisations.

2. Principles and Approach to Delivery

The key principles include:

- The development of integrated and seamless person centred care pathways based on models of social inclusion, early intervention, health and wellbeing.
- Care and treatment to be evidence based and monitored through robust clinical governance arrangements to ensure the effectiveness and quality of Service provision.
- Safeguarding must always be given the fullest consideration during the commissioning process.
- An approach to integration that supports incentives for prime provider organisations to improve care and achieve efficiency through earlier intervention.
- There should be ongoing and continued dialogue with stakeholders (users, carers and providers) to identify needs and inform the joint commissioning process in a transparent, open and fair manner.

3. Objectives for Year 1 of the Agreement

Our focus in year 1 (2011/12) is on areas in which we believe greatest impact can be attained, either in terms of quality of service provision and/or financial savings based on significant levels of co-ordination and joint working.

The areas can be broken down into four broad headings

- Existing Section 75 Arrangements and Commissioning Intentions.
- Themes for future joint commissioning.
- Infrastructure for joint commissioning arrangements.
- Large scale change which delivers financial savings.

3.1 Commissioning Intentions and Priorities for 2011/12

Detailed commissioning intentions and commissioning plans exist for the following.

These source documents shall be collated and held in the Joint Commissioning Unit.

NHS West Sussex Draft Commissioning Intentions, Mental Health 2011/12

Dementia Services Joint Commissioning Intentions

Commissioning Intentions for Learning Difficulty 2011/12

Commissioning Intentions for Health & Well Being Services for Children

Commissioning Intentions for Speech and Language Therapy

Drug and Alcohol Action Team Commissioning Intentions 2011/12

Joint Procurement for Domiciliary Care

West Sussex Inter-Agency Carers Strategy, Commissioning Intentions and Plans 2010-2015

3.2 Future Joint Commissioning

We wish to lead the re-design of commissioning arrangements, so that they are better joined-up and maximise integration both in commissioning and provision.

The following priorities are being further developed, to quantify the contribution they shall make to improved outcomes and system savings that are required.

1. Housing support – to bring together the arrangements for ensuring social care and housing support are delivered efficiently and help people stay at home longer with the support they need in suitable accommodation. Early objectives in year one include:

- Implementing a new framework for the prevention of homelessness amongst young people and monitoring the impact this has on the numbers of 16 and 17 year olds with housing need (by September 2011). This assumes a reduction in number of homeless 16 and 17 year olds entering local authority care.
- Complete and implement the strategic reviews of the existing Supporting People programme in order to make sure that resources are aligned to needs and priorities as opposed to historic patterns of service delivery (by March 2012)
- Improve the efficiency and effectiveness of the way we manage the Council's residential sites for Gypsies and Travellers (by March 2012)
- Promote new investment in supported housing schemes where there is a proven need for additional accommodation based provision (by March 2012).
- All the above objectives will contribute to efficiency savings of £900k in 2011/12 and £400k for 12/13. This will be reported in quarterly tracking reports.

2. Develop the use of assistive technology across health and social care to help patients manage their conditions more effectively and be able to remain in their own home, with less reliance on social and health care professionals visiting. Early objectives in year one include:

- Deliver a review of the county-wide telecare service to justify spend based on current arrangements and determine strategic direction and potential efficiency savings by March 2012.

3. Develop a lifelong pathway for families with children with complex disabilities that meets their needs throughout their lives. Early objectives in year one include:

- Undertaken a joint strategic needs analysis around life-long disability needs by March 2012.
- Considered and developed structures for single approach to care management and operational commissioning for meeting health and social care needs of individual children and adults with life-long disabilities and their family/carers by March 2012.
- Reviewed short-breaks/respite provision looking to streamlining contracting and provider management arrangements, achieving best value in provision of services and achieving and or working towards life-long provider services where possible by March 2012.

- Agreed and be implementing a single RAS/approach to personalisation for children and adults with life-long disabilities by March 2012.

4. Integrate the provision for health and social care response to the complex frail elderly

to support reduced admissions to hospital; more appropriate use of residential

and nursing home care and improve the patient experience. Early objectives in year one include:

- Undertake a review of Intermediate Care, Re-ablement, and Community Rehabilitation services so that they are integrated by March 2012. This will result in remodeling these services to provide a single county-wide service with clear access criteria and clinical pathway and deliver 10% efficiency savings by March 2012.

6. Integrate the planning and commissioning of support to carers across health and social care. Early objectives in year one include:

Early objectives in year one include:

New county-wide carers support service to be commissioned and in place by April 2012 delivering 15% efficiency savings in 2012/13 and further efficiencies in 2013/14 following review of carers support worker roles and emotional support to carers services.

7. Develop multi agency early intervention and family support for families to ensure that we stop problems arising in the first place and we help the most needy to keep them happy, healthy and safe in their homes, in their community. This is an agreed priority from the West Sussex Co-operative and has cross-organisational support. Early objectives in year one include:

- Set up of the support teams to begin targeting vulnerable families.
- Create a business function that enables identification of adults with mental health and / or substance misuse problems who are also parents.
- Expected savings will be generated by March 2012 from a reduction in (other related social care costs), reduced reliance on expensive mental health services, reduced social housing costs of interventions, and reduced involvement with criminal justice services.

8. Continue with the transformational change opportunities in mental health and dementia. Early objectives in year one include:

- Develop Ageless Functional MH Services - for people under the age of 65 extended to older age group (e.g. Assertive Outreach; Recovery; day services) by October 2011.
- Pooled budget extended to cover 65 age group by October 2011.
- Introduce single set of outcomes and productivity metrics applied to all contracts by October 2011.
- Integrated Care for People with Dementia- develop prime provider arrangements with clear accountability for delivery of outcomes by March 2012.
- Introduce single set of outcomes and productivity metrics applied to all contracts by March 2012.

- Redevelop Primary Care MH & Substance Misuse Service to initiate access to existing psychological therapy service for people with anxiety and depression formally extended to people with drug and alcohol problems by October 2011.
- GP Liaison Services to be developed to provide a Shared Care approach for people with drug and alcohol problems by March 2012.
- Redevelop - Specialist Dual Diagnosis Service so that designated Dual Diagnosis Workers located in each specialist MH team work along side care co-ordinators for clients with substance misuse problem and imparting advice to rest of the team by March 2012.
- Specialist support, training & consultancy to specialist MH teams provided through Specialist Substance Misuse provider by March 2012.
- Clear contracting which unequivocally sets out accountabilities of partner organisations by March 2012.

It will not be possible to focus on all these areas in the first year but further work is required to identify where the benefits are greatest. The timescale is as follows:

- **Joint teams are currently working up potential proposals.**
- **Proposals will be shared with the Programme Board in early December 2010.**
- **Priorities for JCU will be agreed at the Joint Commissioning Board in February 2011.**
- **These will be included in PCT and WSCC operating plans for 2011/2012.**

3.3 Infrastructure

A Joint Commissioning Unit owned by partner organisations and hosted by the Council will be established from April 2011

In Year 1, we shall

- Investigate options and agree a shared performance management framework to provide up to date and reliable information to the Joint Commissioning Board, to inform decision-making processes.
- Explore partnership arrangements with other local authorities and Sussex PCTs for streamlining commissioning and support for commissioning.
- Develop partnership arrangements with GP Commissioners which clearly set out plans for Clinical Commissioning.
- Develop an accountability agreement with the Commissioning Support Unit for functions undertaken on behalf of the Joint Commissioning Unit, eg acute contracting.
- Develop a plan with South East Coast Strategic Commissioning Group to ensure transition to NHS Commissioning Board arrangements, eg Specialist Services National Definition Set.

3.4 Financial Savings

By 31 December, we shall agree draft budgets for the following financial year. We shall confirm final budgets and any changes to financial procedures by no

later than 31 March 2012 and by 31 March in each preceding financial year for the following financial year.

Agreed budgets will reflect the required efficiency savings of each partner.

A list of the budgets that will be managed initially either as part of the Pooled Fund or as Non Pooled Funds is shown in Appendix 2 of this Agreement.

4. Review and Forward Plan

4.1 This Schedule is reviewed annually by the Joint Commissioning Board.

4.2 A strategic and financial annual review of these objectives will be coordinated by the Pooled Fund Manager in accordance with Clause 12 of this Agreement and the outcome of that review will inform the preparation of the next Annual Commissioning Plan

4.3 A draft Annual Commissioning Plan to incorporate a Revised Annual Finance Agreement will then be prepared for adoption by the Joint Commissioning Board as a part of its Annual Review Process.

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SCHEDULE 2

THE PCT'S NHS HEALTH CARE FUNCTIONS AND THE COUNCIL'S HEALTH RELATED CARE FUNCTIONS

Part 1 - NHS Health Care Functions of the PCT (the PCT Functions)

Regulation 5 Functions of NHS bodies

(NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617))

The NHS functions are--

(a) the function of providing, or making arrangements for the provision of, services--

(i) under sections 2 and 3(1) of the 1977 Act, including rehabilitation services and services intended to avoid admission to hospital but excluding surgery, radiotherapy, termination of pregnancies, endoscopy, the use of Class 4 laser treatments and other invasive treatments and emergency ambulance services; and

(ii) under section 5(1), (1A), and (1B) of, and Schedule 1 to, the 1977 Act; . . .

[(b) the functions under sections 117 and 130A of the Mental Health Act 1983;

[(bb) the functions of making direct payments under--

(i) section 12A(1) of the National Health Service Act 2006 (direct payments for health care); and

(ii) regulation 2(7) of the National Health Service (Direct Payments) Regulations 2010;] and

(c) the functions under Schedule A1 of the Mental Capacity Act 2005].

Part 2 - Health Related Care Functions of the Council (the Council Functions)

Regulation 6 Health-related functions of local authorities

(NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617))

The health-related functions are--

(a) the functions specified in Schedule 1 to the Local Authorities Social Services Act 1970 except for functions under--

(i) [subject to sub-paragraph (k),] sections 22, 23(3), 26(2) to (4), 43, 45 and 49 of [the 1948 Act];

(ii) sections 6 and 7B of the Local Authorities Social Services Act 1970;

(iii) [section 3 of the Adoption and Children Act 2002];

(iv) sections 114 and 115 of the Mental Health Act 1983;

- [(iva) subject to sub-paragraph (1), section 17 of the 1983 Act;]
 - (v) the Registered Homes Act 1984; and
 - (vi) Parts VII to X and section 86 of the Children Act 1989;
-
- (b) the functions under sections 5, 7 or 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 except in so far as they assign functions to a local authority in their capacity of a local education authority;
 - (c) the functions of providing, or securing the provision of recreational facilities under section 19 of the Local Government (Miscellaneous Provisions) Act 1976;
 - (d) the functions of local education authorities under the Education Acts as defined in section 57 of the Education Act 1996;
 - (e) the functions of local housing authorities under Part I of the Housing Grants, Construction and Regeneration Act 1996 and under Parts VI and VII of the Housing Act 1996;
 - (f) the functions of local authorities under section 126 of the Housing Grants, Construction and Regeneration Act 1996;
 - (g) the functions of waste collection or waste disposal under the Environmental Protection Act 1990;
 - (h) the functions of providing environmental health services under sections 180 and 181 of the Local Government Act 1972;
 - (i) the functions of local highway authorities under the Highways Act 1980 and section 39 of the Road Traffic Act 1988; and
 - (j) the functions under section 63 (passenger transport) and section 93 (travel concession schemes) of the Transport Act 1985;
 - [(k) where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of accommodation under sections 21 or 26 of the 1948 Act, the function of charging for that accommodation under section 22, 23(2) or 26 of that Act, or
 - (l) where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of a service under any enactment mentioned in section 17(2)(a) to (c) of the 1983 Act, the function of charging for that service under that section].

SCHEDULE 3

SERVICE: SCOPE OF SERVICE, ELIGIBILITY AND ACCESS

1. Introduction

- 1.1 The following Schedule describes the eligibility, means of access to the service and model of care to be delivered by the Partners under this Agreement.
- 1.2 It distinguishes between those services that are already commissioned from pooled arrangements; those that shall be commissioned from pooled budgets; and those that shall be commissioned from aligned budgets.
- 1.3 The Schedule shall be reviewed annually.

2. Scope of the Service

- 2.1 Services will be commissioned to meet the health and well being needs of the people of West Sussex. This will enable the aims of Schedule 1 to be realised and will ensure that minority communities, vulnerable adults and children and young people and those with complex needs are included.
- 2.2 The service will be for people who live within West Sussex, and/or who are registered with a GP practice in West Sussex
- 2.3 The service can also be for other Service Users as from time to time agreed between the Partners
- 2.4 Each service to be commissioned will have included in its service specification a clear statement on eligibility, access and referral protocols. This information will be held in one directory at the Joint Commissioning Unit.
- 2.5 Access to universal health care will be through existing NHS systems.
- 2.6 Access to targeted and specialist services will be through self and professional referrals according to defined criteria to be agreed between the Partners.

3. The Services to be commissioned shall usually comprise those set out below

- 3.1 The services listed here are not exhaustive and may be varied by written agreement between the Partners from time to time
- 3.2 The list gives detail on those services to be commissioned by the Joint Commissioning Unit. These are services that:
 - Are currently commissioned from pooled arrangements
 - To be commissioned by the JCU, in pooled arrangements established in Year 1
 - To be commissioned by the JCU, but not in pooled arrangements

3.3 The list gives detail on those services specifically excluded from pooled and non-pooled arrangements.

Services currently commissioned from pooled arrangements

Adult Learning Difficulty Services (18 +)

- Individual care packages to meet eligible social care needs including Direct Payments
- Health and social care community LD Teams
- Supported Living
- Residential and nursing home services including CHC for adults with LD where LD is primary need
- Specialist LD In-patient services including secure and forensic in-patient services for adults with LD where LD is primary need
- Carers services including short breaks and respite services
- Employment Services
- Advocacy services
- Day Care and services which enable access to community services including access to community sports and leisure facilities

Working Age Mental Health Services (18-65)

- Community Mental Health Teams
- Access & Crisis Services
- Clinical Services (Including Inpatient Services)
- Secure and High Dependency Provision
-
- Services for mentally disordered offenders
- Other community & hospital professional teams (including specialist eating disorders, perinatal MH, dual diagnosis)
- Psychological therapy services
- Primary Care Mental Health Services
- Home support services
- Day services
- Support services
- Carers services
- Accommodation
- Mental health promotion
- Personality disorder services
- Direct payments

Telecare services

- A thirteen (13) week telecare service to support hospital discharge and/or prevent hospital admissions

Services to be commissioned by the JCU and in pooled arrangements from Year 1

Children's Services

- Child and Adolescent Mental Health and Emotional Wellbeing Services *

- Substance Misuse Services
- Speech and Language Services

* Please note elements with health CAMHS may still be commissioned outside of the section 75 such as tier 3-4

Carer's Services

- Information and Advice Services
- Emotional Support Services
- Respite Services: home respite, emergency respite, dementia respite services
- Short Break Schemes
- Carers Website
- Emergency Alert Cards

Substance Misuse Services for Adults 18 years+

- Community based adult open access and specialist substance misuse services, including but not limited to needle exchange services, for those aged 18 years and over.
- Pharmacy based substance misuse interventions.
- Supported Employment.
- Integrated Drug Treatment Services at HMP Ford.
- Inpatient detoxification and residential rehabilitation treatments for those aged 18 years and over.
- West Sussex Friends and Family Network, providing carer and family interventions
- EXACT, a network of independent service user groups
- Bespoke Training packages provided by the DAAT Training Manager to targeted groups of professionals
- HALO, the electronic patient management system used by service providers to manage service user records and upload data for central and local performance management

Services to be commissioned by JCU but not in Pooled Arrangements

Children's Services

- Sussex Community NHS Trust
- Specialist Children's Health Services including Children's development centres, therapies and support services
- Healthy Child Programme
-
- Procurement of residential and foster care services, and residential services for children with disabilities

Housing Services

- Housing support services, including community alarms provision
- Capital new build

- Adapted accommodation

Older Adult Services (65+) in Mental Health

- Care for People in General Hospital (including Shared Care and MH Liaison)
- Primary Care Mental Health Services
- Community Mental Health Teams
- Access & Crisis Services
- Home Care/Assistive Technology
- Day services/Day Care
- Care Home/Care Home with nursing
- Intermediate Care
- Inpatient Services (Organic & Functional)
- Memory Assessment
- Secure and High Dependency Provision
- Services for mentally disordered offenders
- Psychological therapy services
- Support Services
- Carers services
- Accommodation
- Mental health promotion
- Personality disorder services
- Direct payments

'Putting People First' Services

- Support, Information and Advice services
- Direct Payments

Physical and Sensory Impairment Services

- Support, Information and Advice services for deaf, deafened and hard of hearing adults
- Support, Information and Advice services for blind and visually impaired people
- Information and Advice services for disabled people
- Communication and Support services for deaf, deafened and hard of hearing people
- Issue based advocacy services
- Employment services
- Advocacy services
- Community services for people with HIV/AIDS

Services specifically excluded from the Pooled and Non Pooled Arrangements

Non contractual activity – these are services provided to people under the NHS non contractual activity rules. Mental Health services form part of the broader PCT budget. They are not within the Pooled Budget nor within the Mental Health Commissioning Budget.

Gender Reassignment – these are the surgical services provided for people wishing to pursue gender reassignment. Funding is allocated by NHSWS to South East Coast Strategic Commissioning Group.

Morbid obesity – care pathway for people with Morbid Obesity issues including surgical interventions provided. Funding is held by PCT.

Acquired Brain Injury – services commissioned as part of Continuing Health Care budget by PCT.

(Morbid Obesity and ABI have been excluded from Pooled and Non Pooled arrangements for MH because they are not MH conditions).

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SCHEDULE 4

RESOURCES

Introduction

This Schedule provides details of the budgets, goods and services to be made available by the Parties and also outlines the key principles governing budget setting and accounting for its use.

1. Financial Arrangements for the operation of the Agreement

The JCMG will agree each year, in accordance with Clause 9 of the Agreement, financial procedures and arrangements for the operation of this Agreement for the following financial year. This will act as a Revised Annual Finance Agreement which sets out the contributions by the Parties after taking account of and including any variation arising from any or all of the following: -

- Any commitment under or in connection with any Care Contract previously committed within the terms of the Agreement.
- Risk Sharing Arrangements – over/under spend arrangements pursuant to Clause 7 of the Agreement and paragraph 3 below;
- Invoicing Arrangements – initially the Council will issue an invoice to the PCT on the first of each quarter due for payment by the 15th of the initial month of the quarter..
- Pooled Fund and Non Pooled Fund Finance Flows - the Council will invoice the PCT each quarter as above for the PCT's contribution to both the Funds; the Council will use these funds to commission providers of services to provide the Service.
- The Parties will agree VAT procedures in accordance with HM Revenue & Customs regulations;
- Use of specific grants and other income ;
- The costs of managing and administering the Pooled Fund itself;
- Accounts and Audit requirements and other points raised by auditors;
- Monitoring information and formats (including contract monitoring);
- Monitoring timetable;
- Non-financial performance information;
- Information management systems & structures for collecting activity and finance information; and
- Accommodation arrangements for Services.

The Budget at Paragraph 5 below will be updated on an annual basis to reflect the agreed contributions from the Parties to the Pooled Fund in accordance with Clause 9 of this Agreement.

Each change to budgets agreed by the Parties will take into account the effect on other budgets and other financial flows involved with any of the Parties.

2. Financial Planning and Budget Setting Process

The budgets will be reviewed in accordance with Clause 9. This shall take account of but not be limited to the following: -

- Demographic change;
- Inflation;
- Changes in future policy;
- Service improvements and other planning assumptions;
- Any agreed addition or decreases of funds for the development of the Pooled Funds against any agreed targets and market forces to be agreed by the JCMG;
- Service enhancement or reduction;
- Required efficiency / quality improvement;
- Income streams; and
- National Initiatives.

The Annual Commissioning Plan and Budget will be prepared in the context of the Operational Delivery Plan of the PCT, the Medium Term Plan of the Council and the overall budgets of the PCT and the overall Council budget and shall be available no later than 31st March annually.

The Pooled Fund Manager shall ensure that any matters relating to the Pooled Fund that might have a material impact on expenditure or income in future years are identified and reported to the JCMG in time to be taken into account in the financial planning and budget setting process and as a part of the Annual Review process leading to production of an annual Service improvement Plan.

The Council's Chief Finance Officer (Section 151 Officer) and the PCT's Director of Finance shall advise the appropriate deadline dates for the provision of such information through the Revised Annual Finance Agreement.

In respect of financial forecasting and budgets, the Parties shall provide explanations, analysis and documentation as necessary, within the limitations set out in Clause 13 of the Agreement for the other Partner to understand the basis of their planning assumptions and the contributions to the Pooled Fund. This information will be made available at the same time as the financial forecasts are shared with the other Partner and the contribution to the Pooled Fund is confirmed.

3. Budget Performance

- 3.1 The Pooled Fund Manager shall report monthly on the financial and budgetary information set out in Section 5 below and in the format specified in the Revised Annual Finance Agreement.
- 3.2 The process for addressing forecast overspends/underspends and taking appropriate action will be agreed by the JCMG in accordance with the Revised Annual Finance Agreement and Clause 7 of this agreement.
- 3.3 **The Pooled Fund Manager shall ensure that the agreed action is taken to correct any projected variation from the Pooled Fund or Non Pooled Funds, reporting on the variation and the action taken or proposed to the JCMG.**

4. Access to Financial information

- 4.1 The PCT and the Council shall make all relevant financial information and records available to the respective Partner subject to any constraints imposed by Clause 13 of the Agreement and whilst respecting commercial confidentiality, shall provide full explanations, examples and advice in response to any reasonable question or request from any other Partner in respect of these records.
- 4.2 The Parties will ensure the accuracy and completeness of financial information being presented under review through the JCMG.

5. Construction of Budget and Contributions

- 5.1 For the avoidance of doubt, the figures shown below are based on budgets in the 2010/11 financial year for the activities that will be commissioned by the JCU. As such they are indicative amounts and are included to show the potential extent of the contributions that both parties will commit to the arrangement. In accordance with clause 9.2, actual budget figures for 2011/12 are expected to be confirmed by 1st April. In the event of this not happening, and until agreement is reached, the amounts in the tables below will form the budget of the JCU.

5.2 Budget

Summary of Budgets transferred to the Pool from the Council

Service Areas	Employees £'000	Non Employees £'000	Income £'000	Total £'000
.....Team				
Area Integrated Working				
County Wide Services				
Commissioning & Governance				
Learning, Schools & Skills				
Total				

For the avoidance of any doubt, £.....m is the Council's contribution to the pooled fund at 2010/11 prices for the period 1 April 2011 to 31 March 2012.

Summary of Budgets transferred to the Pool from the PCT

Service Areas	Employees £'000	Non Employees £'000	Income £'000	Total £'000
Community Health Services:				
Area Integrated Working				

County wide Services				
Commissioning & Governance				
Total Community Health Services				
PCT Services:				
Area Integrated Working	0		0	
County wide Services	0		0	
Commissioning & Governance			0	
Total PCT Services			0	
Total				

For the avoidance of any doubt, £.....m is the PCT's contribution to the pooled fund at 2010/11 prices for the period 1 April 2011 to 31 March 2012.

Summary of Non Pooled Budgets of the Council to be managed within the Agreement

INSERT

Summary of Budgets transferred to the Pool from the PCT to be managed within the Agreement

INSERT

6. Resources Available Outside the Pooled Fund

6.1 The Parties shall ensure continued access to all resources outside the Pooled Fund necessary for the purposes of this Agreement including but not limited to the following :-

- Contracts and procurement functions
- Operations functions
- HR functions
- IT functions
- Finance functions
- Legal functions
- Business Intelligence

6.2 Access to each particular resources listed in 6.1 shall cease when both Parties agree the resource is no longer required for the purpose of the Agreement.

6.3 The Parties shall ensure access to all systems necessary for the purposes of this Agreement including the following :-

- ICS
- CAF
- Aspire
- Impulse
- PIMS
- Contracts database
- NHS Data Warehouse
- e-financials
- Internet & e-mail
- NHS and WSCC intranet
- Shared Business Services
- NHS Net
- Secondary User Service.

6.4 Access to each particular system listed in 6.3 shall cease when both Parties agree the resource is no longer required for the purpose of the Agreement

7. Premises, Assets and Consumables

- 7.1 The Council and the PCT shall provide or make available the premises, with support services and facilities management to those premises, that they provided before the Commencement Date or such other premises and support services, as are necessary for the delivery of the Services and as agreed between the Parties.
- 7.2 The Council and the PCT shall continue to provide premises related resources such as furniture, equipment, stationery, printing, postage (where it can be identified), and telephones and mobiles where these are separately identified and not specifically included in the Pooled Fund or Non-Pooled Fund.
- 7.3 The Council shall develop operational guidance for staff as to the allocation of all expenditure against the Pooled Fund, Non-Pooled Funds or other budgets.

SCHEDULE 5 GOVERNANCE

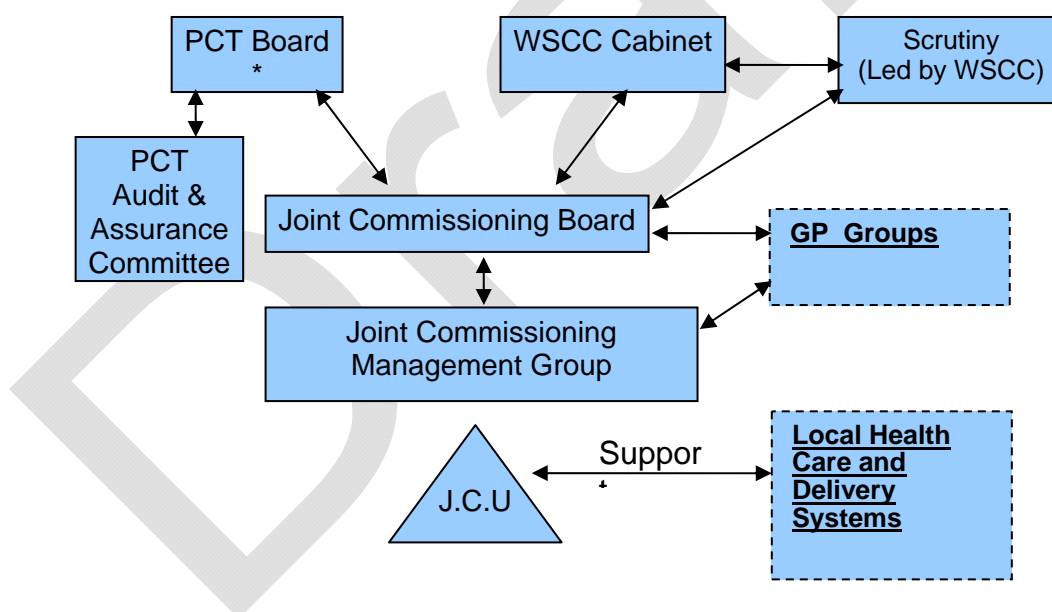
INTRODUCTION

WSCC and NHS West Sussex have agreed the governance arrangements set out in this schedule in furtherance of the aims and objectives described in clause 3 and Schedule 1 of the Section 75 Agreement.

The parties will review these governance arrangements in light of their experience and to take into account of Statutory Guidance and legislation. Any variation shall be effected through the mechanism of Clause 12 of the S75 Agreement. These arrangements shall apply until the parties agree otherwise.

The Parties intend that this Agreement shall facilitate the transition from PCT commissioning to commissioning by GP consortia.

STRUCTURE



(* It should be noted that the PCT Board is the current responsible NHS Commissioner during the transition period which will be replaced by the GP Commissioning Groups. Further changes will also identify the role of the Health and Wellbeing Boards.)

The **Joint Commissioning Unit (JCU)** is responsible for the implementation of the Annual Commissioning Plan, the direct procurement of services, managing the performance of contracts and providing reports to the Joint Commissioning Management Group. The **Joint Commissioning Management Group** is responsible for the operational management of the partnership commissioning arrangements and reports directly to the Joint Commissioning Board. The **Joint**

Commissioning Board will approve the annual commissioning plan and manage and monitor the budgets and resources outlined in this plan.

JOINT COMMISSIONING BOARD

Purpose

The Joint Commissioning Board (JCB) provides the overall strategic oversight and direction to the joint commissioning arrangements in West Sussex. It is responsible for planning the way WSCC and the health service work together to commission health and social care for agreed care groups. It will manage and monitor pooled, non-pooled budgets and resources for these services (as listed in Appendix 2, Schedule 4).

MEMBERSHIP

The membership of JCB will be as follows: -

- Cabinet Member for Education and Schools WSCC
- Cabinet Member for Children and Families (Lead Member for Children), WSCC
- Cabinet Member for Adults' Services, WSCC
- Cabinet Member for Finance and Resources, WSCC
- Director of Children's Services, WSCC on behalf of Social Care and Learning
- Director of Adult Services, WSCC
- Director of Joint Commissioning, WSCC
- Director Public Health and Safeguarding, WSCC and NHS West Sussex
- Chair, NHS West Sussex
- Executive from Sussex Cluster
- Non Executive Director, NHS West Sussex
- Managing Director of Coastal West Sussex Federation
- Managing Director of North West Sussex Association of Commissioning Consortia
- Chief Medical Director, NHS West Sussex
- Director of Quality and Chief Nurse, NHS West Sussex

- District/Borough Council representative (observer)

Pooled Fund Manager and Commissioning Manager, Partnership Governance (officers who will be reporting to JCB and will be observers to the Board and provide advice and support).

If positions or organisational structures change, the JCB will ensure the balance of membership is maintained.

THE CONFIGURATION OF GP COMMISSIONING GROUPS MAY CHANGE OVER TIME AND MEMBERSHIP WILL NEED TO REFLECT THIS AND BE CHANGED ACCORDINGLY, THROUGH MUTUAL AGREEMENT).

FUNCTIONS

- The JCB will be responsible for agreeing and monitoring the Annual Commissioning Plan including the budget and agree financial contributions from both health service and WSCC.
- To agree all plans which comprise significant financial and service planning commitments across areas of joint commissioning responsibility for pooled or non-pooled budgetary provision.
- To receive and consider reports from the JCMG on service development, budget monitoring, audit and inspection reports in relation to those services which are the subject of formal partnership arrangements.
- To confirm and agree, pursuant of Clause 9 of this agreement, the allocation of the budget approved by the partners including any additional non-recurring contributions, and to agree the Revised Finance Agreement (as defined in Schedule 4).
- To seek approval from partners for additional non-recurring contributions where anticipated future commitments are likely to exceed the aggregate contributions of the partners to the Pooled Fund, confirmed or agreed pursuant to Clause 9 of this agreement.
-
- To seek assurance on the quality and safety of services commissioned by the receipt of 'service provider' reports and reports from Business Intelligence (CSU) in relation to key performance indicators and standards (as outlined in the contract). Where performance is outside of expected thresholds to receive 'service provider' exception reports that have been scrutinised by the PCT Quality Team. By exception receive reports on clinical quality from the PCT Quality Team.
- To review and agree annually the risk assessment and risk sharing protocol and agree actions arising from the review.
- To review and agree commissioning strategies.

JCB SUPPORT

The JCB will be supported by officers from WSCC. The Commissioning Manager, Partnership Governance will provide the Secretariat function to the JCB.

JCB MEETINGS

- The JCB will meet quarterly.
- The JCB will meet in public and public notice will be given of the dates, times and venues of all meetings.
- A chairman will be elected annually by JCB members.
- All meetings will be open to the press and public to attend as observers
- The agenda and all reports will be published a minimum of five working days before the meeting and supplied to members of the public and press

- on request (subject to certain matters being discussed in the absence of the press and public where it is in the public interest to do so).
- Board decisions will be by mutual agreement..
 - A report of the decisions taken at the meeting will be published immediately after the meeting, or the unconfirmed minutes of the meeting to be published within five working days of the meeting.
 - The JCB will ensure that a programme of all potential decisions is published with the papers and considered at each of its meetings to create a rolling update of the Annual Commissioning Plan. This will inform the process of scrutiny, led by the relevant WSCC Scrutiny Committee which will then decide which areas of work it wishes to scrutinise. Scrutiny activities may, where considered appropriate be undertaken jointly with partners e.g. West Sussex borough and district councils.
 - Joint Commissioning arrangements will be through the Audit and Assurance Committee which is a sub-committee of the PCT Board

Joint Commissioning Management Group

Purpose

The Joint Commissioning Management Group (JCMG) is responsible for the operational management of the partnership arrangements established under this Agreement, including the monitoring of arrangements, receiving reports, agreeing actions in respect of the operation and impact of the arrangements and developing the Annual Commissioning Plan. The JCMG is directly accountable to the Joint Commissioning Board, but it will hold the Joint Commissioning Unit to account for its delivery.

MEMBERSHIP

The membership of the JCMG will be as follows: -

- Director of Joint Commissioning, WSCC
- Executive Director of Public Health, West Sussex County Council and NHS West Sussex
- Managing Director of Coastal Sussex Federation
- Managing Director of North West West Sussex Association of Commissioning Consortia
- Pooled Fund Manager and Commissioning Manager, Partnership Governance (officers who will be observers to the JCMG and provide advice and support.)

Where for the purposes of Clauses 7.2 and 7.3 the Pooled Fund Manager is the Director of Joint Commissioning then the Council shall nominate an additional member to the JCMG and the Director of Joint Commissioning shall be a non voting member whilst they carry out the functions of the Pooled Fund Manager

If agreed by the JCMG, additional invitees may be requested to attend their meetings, such invitees to attend in a non-voting capacity.

FUNCTIONS

- The JCMG is authorised within the limits of delegated authority for its members (which is received through their respective organisation's own schemes of delegation):

- To ensure the delivery of the Annual Commissioning Plan that has been agreed by JCB.
- To ensure performance in all areas of joint work against the Annual Commissioning Plan and agreed performance targets are met to ensure appropriate management action is taken to achieve the defined objectives.
- To provide an annual report on outcomes against the Annual Commissioning Plan for information to the partners, Children's Trust and Health and Wellbeing Board
- To provide assurance to the JCB in performance, service developments and risk management through regular reports to the JCB.
- To agree variations in accordance with Clause 12.2 for amendments to the Annual Commissioning Plan, the allocations or re-allocations of services to the Pooled Budget or Non-Pooled Budgets, and the contributions of the Partners.
- To agree proposals for procurement exercises, which shall be undertaken in accordance with the Council's Standing Orders on Procurement and Contracts, and variations to contracts entered into by either Party for the delivery of Services which are managed by the Joint Commissioning Unit.

JCMG Support

The JCMG will be supported by officers from WSCC. The Commissioning Manager, Partnership Governance will also provide secretariat function to the JCMG.

JCMG MEETINGS

- The JCMG will meet monthly at least ten times per annum and at a time to be agreed.
- The quorum for meetings states that all members must be present and decisions must be unanimous. Where unanimous agreement is not reached the decision will be referred back to the Authorised Officers.
- Minutes of all decisions will be kept and copied to the Authorised Officers within five days of every meeting.
- All parties must agree in writing if a deputy attends on behalf of a member of the JCMG.
- Decisions can be taken virtually and recorded by email.

URGENT DECISIONS

In circumstances of urgency in which it is not reasonably practicable to consult all members of the JCMG, the Director of Joint Commissioning, acting alone, is empowered to make decisions on behalf of the JCMG.

The Director of Joint Commissioning shall take reasonable steps to consult as many members of the JCMG as possible before making an urgent decision, and after making such an urgent decision, shall notify all members of the JCMG that an urgent decision has been made, and the circumstances leading to that decision, as soon as reasonably practicable.

POOLED FUND MANAGER

The Pooled Fund Manager will report directly to the Director of Joint Commissioning and is responsible for managing the pooled and non-pooled budgets. This person will act as a non-voting member of both the JCB and JCMG. The Pooled Fund Manager may delegate the day-to-day management of pooled fund in accordance with the Council's standing orders, financial regulations and such other applicable Scheme of Delegation.

(This role will be an existing member of the JCU Management structure)

REPORTING SCHEDULE

- The Pooled Fund Manager shall supply to the JCMG on a monthly basis the financial and activity information as referred to at Schedule 4 on Resources and included in the Performance Reporting Framework set out here at Appendix 1.
- The Annual Commissioning Plan as agreed by the JCB and revised annually thereafter will form the basis for delivery by the JCU against the Section 75.
- Any variation to the Annual Commissioning Plan and/or the Revised Annual Finance Agreement must be agreed by the JCB.
- The Pooled Fund Manager will refine the Aims and Objectives set out in Schedule 1 into targets and performance measures to be agreed by the JCMG from time to time and in any event by 30th April 2011, following a strategic and financial review to be led by the JCMG.
- Service Provider and Business intelligence (CSU) clinical quality reports to be received and reviewed against quality standards and outcomes. Exception and assurance reports to be provided where performance is outside of agreed thresholds following review by the PCT Quality Team.

Draft

APPENDIX 1

Schedule 5 JCMG Performance Reporting Framework

TO BE INSERTED

Draft

**SCHEDULE 6:
STAFF TRANSFER AND SECONDMENT**

Part 1: Staff Secondment

Part 2: Staff Transfer

Annex 1: List of Seconded Employees

Annex 2: Secondment Protocol

Part 1: Staff Secondment

In addition to the terms used in the main Agreement, the following terms shall apply:

Confidential information	information relating to the business, products, affairs and finances of the relevant party for the time being confidential to the relevant party and trade secrets including, without limitation, technical data and know-how relating to the business of the relevant party or any of its suppliers, clients, customers, agents, distributors, or management;
Employment contract	the terms of employment between the PCT and the Seconded at the date of this agreement, [details OR a copy] of which [are attached/ have been provided], subject to any changes in the Seconded's salary or other benefits in accordance with the PCT's usual procedures from time to time;
Employment Costs	The costs of employing the Secondeds, including the items of expenditure listed in paragraph 4.4 of Part 1 of this Schedule 6;
Management issues	All those matters under the Employment Contract requiring action, investigation and/or decisions by the PCT including in particular (by way of illustration only and without limitation) appraisals and performance issues; pay reviews and the award of other payments and benefits under the Employment Contract; periods of annual, sick or other leave; absence of the Seconded for any other reason; any complaint about the Seconded (whether or not that would be dealt with under the PCT's disciplinary procedure) and any complaint or grievance raised by the Seconded (whether or

	not that would be dealt with under the PCT's grievance procedure);
Secondee	the employees listed in Annex 1 to this Schedule 6 (Seconded Employees);
Secondment	the secondment of the Secondee by the PCT to the Council under the terms of this agreement;
Secondment period	the period of this Agreement as defined in paragraph 1.2.

1. SECONDMENT OF PCT STAFF TO THE COUNCIL

- 1.1 To the extent that they are engaged in the exercise of the PCT Functions, the PCT shall second the Secondees to the Council on an exclusive and full-time basis for the Secondment Period to provide the Services in accordance with the terms of this Agreement.
- 1.2 The Secondment Period shall commence on 1 April 2011 and shall continue until terminated:
- (a) pursuant to a transfer under TUPE;
 - (b) by either party giving not less than [NUMBER] weeks' prior written notice at any time;
 - (c) if the Agreement is terminated; or
 - (d) in the event that the individual Secondment arrangements cease.

2. SERVICES

- 2.1 The PCT shall procure that the Secondee shall provide the Services at the Council's premises or such other place within West Sussex as the Council may reasonably require for the proper performance and exercise of the Services.
- 2.2 The Secondee may be required to travel on the Council's business to such places by such means and on such occasions as the Council may from time to time require.
- 2.3 The PCT shall use its reasonable endeavours to procure that the Secondee shall work such hours as are reasonable and necessary for the proper performance of the Services.

- 2.4 The PCT shall use its reasonable endeavours to procure that the Secondee shall during the Secondment:
- (a) unless prevented by incapacity, devote the whole of their working time, attention and abilities to the Services;
 - (b) faithfully and diligently serve the Council and use their best endeavours to promote, protect, develop the Arrangements;
 - (c) not enter into any arrangement on behalf of the Council which is outside the normal course of business or their normal duties or which contains unusual or onerous terms; and
 - (d) unless otherwise instructed, promptly make such reports to the Pooled Fund Manager on any matters concerning the affairs of the Council and at such times as are reasonably required.

3. SECONDEE'S EMPLOYMENT

- 3.1 The Employment Contract shall remain in force during the Secondment Period.
- 3.2 The PCT [has made **OR** shall make the necessary changes to the terms of the Employment Contract so that it can] second the Secondee to the Council to provide the Services in accordance with the terms of this agreement.
- 3.3 The PCT [has amended **OR** shall amend] the Employment Contract to require the Secondee to comply with the Council's procedures.
- 3.4 The PCT shall comply with the terms of the Employment Contract during the Secondment Period.
- 3.5 The Council shall not, and shall not require the Secondee to do anything that shall, breach the Employment Contract and shall have no authority to vary the terms of the Employment Contract or make any representations to the Secondee in relation to the terms of the Employment Contract.
- 3.6 The Council shall provide the PCT with such information and assistance as it may reasonably require to carry out its obligations as the Secondee's employer.
- 3.7 The Secondee shall [not be required to undertake any work for the PCT during the Secondment Period **OR** be required to undertake [DETAILS OF ANY WORK FOR THE PCT TO BE DONE DURING THE SECONDMENT PERIOD] during the secondment period].

- 3.8 Any change in the Employment Contact during the Secondment Period shall be notified to the Council.
- 3.9 If the Secondee is held to be employed by the Council at any time during the Secondment Period then the provisions of Part 2 of this Schedule 6 (Staff Transfer) shall apply. If any conflict arises between the terms of this Part 1 (Staff Secondment) and Part 2 (Staff Transfer) the provisions of Part 2 (Staff Transfer) shall take precedence.
- 3.10 Subject to paragraph 4 (Payments), all documents, manuals, hardware and software provided for the Secondee's use by the Council, and any data or documents (including copies) produced, maintained or stored on the Council's computer systems or other electronic equipment (including mobile phones and Blackberries), remain the property of the Council.

4. PAYMENTS

- 4.1 The PCT shall pay the Secondee's salary and any allowances, provide any benefits due to the Secondee, make any payments to third parties in relation to the Secondee and make any deductions that it is required to make from the Secondee's salary and other payments.
- 4.2 The PCT shall refund the Secondee all reasonable travel, accommodation and other expenses wholly, exclusively and necessarily incurred by the Secondee during the Secondment Period in or in connection with the exercise of the Services, if such expenses are evidenced in such manner as the PCT may specify from time to time.
- 4.3 Subject to paragraph 4.4, the PCT shall recharge the Council in respect of any payments made under Paragraphs 4.1 and 4.2, but excluding any payments made under paragraph 4.5.
- 4.4 For the duration of the Term, the PCT's Financial Contributions shall include a sum equal to the Employment Costs in respect of the Transferring Employees throughout the Term of the Agreement which shall include but are not limited to:
- (a) the Secondee's salary as reviewed by the PCT on an annual basis, the first such review on [DATE], in line with the policy for the PCT's employees;
 - (b) other payments and allowances, including travel and subsistence payments;
 - (c) holiday pay and bonuses;
 - (d) payments of PAYE and national insurance contributions;

- (e) any overtime payments made to the Secondee during the Secondment Period and approved in advance by the Council; and
- (f) the employer's contribution rate payable in respect of the Secondees' membership of the National Health Service Pension Scheme (NHSPS).

4.5 The PCT shall be responsible for any payments owed to the Secondee pursuant to a dismissal for redundancy. For the avoidance of doubt, any payments made in respect of redundancy shall be met separately by the PCT and shall not be recharged to the Council.

5. MANAGEMENT DURING THE SECONDMENT

5.1 The PCT shall continue to deal with any Management Issues concerning the Secondee during the Secondment Period, where relevant following consultation with the Council.

5.2 The Council shall use its reasonable endeavours to provide any information, documentation, access to its premises and employees and assistance (including but not limited to giving witness evidence) to the PCT to deal with any Management Issues concerning the Secondee whether under the PCT's internal procedures or before any court of tribunal. The PCT will reimburse the reasonable costs and expenses incurred by the Council in doing so subject to the prior approval of the PCT.

5.3 The Council shall have day-to-day control of the Secondee's activities but as soon as reasonably practicable shall refer any Management Issues concerning the Secondee that come to its attention to the PCT.

5.4 Both parties shall inform the other as soon as reasonably practicable of any other significant matter that may arise during the Secondment Period relating to the Secondee or their employment.

5.5 The PCT shall use its reasonable endeavours to procure that the Secondee shall notify the Pooled Fund Manager if the Secondee identifies any actual or potential conflict of interest between the Council and the PCT during the Secondment Period.

6. LEAVE

6.1 The Secondee shall continue to be eligible for sick pay, holiday pay and any absence entitlements in accordance with the Employment Contract, and shall remain subject to the PCT's approval and notification procedures.

- 6.2 The PCT shall consult with the Council before approving any holiday request made by the Secondee.
- 6.3 The PCT [shall amend **OR** has amended] the Employment Contract to require the Secondee to comply with the Council's reporting arrangements if the Secondee is absent from work for any reason.
- 6.4 The Council shall notify the PCT if the Secondee is absent from work.

7. DATA PROTECTION

- 7.1 The PCT confirms that the Secondee has consented to the Council processing data relating to the Secondee for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Secondee including, as appropriate:
- (a) information about the Secondee's physical or mental health or condition in order to monitor sick leave and take decisions as to the Secondee's fitness for work;
 - (b) [the Secondee's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with the equal opportunities legislation;]
 - (c) information relating to any criminal proceedings in which the Secondee has, or is alleged to have, been involved [for insurance purposes and in order to comply with legal requirements and obligations to third parties.
- 7.2 The PCT confirms that the Secondee has consented to the Council making such information available to those who provide products or services to the Council (such as advisers and insurers), regulatory authorities, governmental or quasi governmental organisations.

8. CONFIDENTIALITY

- 8.1 The PCT [shall use its reasonable endeavours to procure that the Secondee shall not **OR** has amended the Employment Contract to require the Secondee not to]:
- (a) (except in the proper course of the Services, as required by law or as authorised by the Council) during the Secondment Period or after its termination (howsoever arising) use or communicate to any person, company or other organisation whatsoever (and shall use his best endeavours to prevent the use or communication of) any Confidential Information relating to the Council that he creates,

develops, receives or obtains during the Secondment Period. This restriction does not apply to any information that is or comes in the public domain other than through the Secondee's unauthorised disclosure; or

- (b) make (other than for the benefit of the Council) any record (whether on paper, computer memory, disc or otherwise) containing Confidential Information relating to the Council or use such records (or allow them to be used) other than for the benefit of the Council. All such records (and any copies of them) shall be the property of the Council and shall be handed over to the Pooled Fund Manager by the Secondee on the termination of this agreement or at the request of the Council at any time during the Secondment Period.

8.2 Nothing in this agreement shall prevent the Secondee from disclosing information that they are entitled to disclose under the Public Interest Disclosure Act 1998, provided that the disclosure is made in accordance with the provisions of that Act and the Secondee has complied with the Council's policy from time to time in force regarding such disclosures.

8.3 The PCT shall, subject to its obligations under the Freedom of Information Act 2000:

- (a) keep any Confidential Information relating to the Council that it obtains as a result of the Secondment secret;
- (b) not use or directly or indirectly disclose any such Confidential Information (or allow it to be used or disclosed), in whole or in part, to any person without the prior written consent of the Council;
- (c) use its best endeavours to ensure that no person gets access to the Confidential Information from it, its officers, employees or agents unless authorised to do so; and
- (d) inform the Council immediately upon becoming aware, or suspecting, that an unauthorised person has become aware of such Confidential Information.

8.4 The Council shall, subject to its obligations under the Freedom of Information Act 2000:

- (a) keep any Confidential Information relating to the PCT that it obtains as a result of the Secondment secret;
- (b) not use or directly or indirectly disclose any such Confidential Information (or allow it to be used or disclosed), in whole or in part, to any person without the prior written consent of the PCT;

- (c) use its best endeavours to ensure that no person gets access to such Confidential Information from it, its officers, employees or agents unless authorised to do so; and
- (d) inform the PCT immediately upon becoming aware, or suspecting, that an unauthorised person has become aware of such Confidential Information.

9. TERMINATION OF INDIVIDUAL SECONDMENTS

- 9.1 Either party may terminate an individual Secondee's Secondment with immediate effect without notice or payment in lieu of notice on the termination of the Employment Contract as a result of the Secondee's dismissal, resignation or retirement.
- 9.2 Any replacement for an individual Secondee shall be employed directly by the Council on the Council's terms of employment. A panel of representatives from both parties shall be responsible for appointing senior managers assigned to the Arrangements.

10. OBLIGATIONS FOLLOWING TERMINATION

- 10.1 Upon termination of the Secondment howsoever arising the PCT shall use its reasonable endeavours to procure that the Secondee shall (if the PCT **OR** Council so requests):
 - (a) deliver to the Council all documents (including, but not limited to, correspondence, lists of clients or customers, plans, drawings, accounts and other documents of whatsoever nature and all copies thereof, whether on paper, computer disc or otherwise) made, compiled or acquired by them during the Secondment and relating to the business or affairs of the Council or its service users, customers or suppliers and any other property of the Council which is in their possession, custody, care or control;
 - (b) irretrievably delete any information relating to the business of the Council stored on any magnetic or optical disc or memory and all matter derived from such sources which is in their possession, custody, care or control outside the premises of the Council; and
 - (c) confirm in writing and produce such evidence as is reasonable to prove compliance with their obligations under this paragraph 10.

11. LIABILITY

- 11.1 The Council shall take out and maintain in full force with a reputable insurance company for the Secondment Period adequate insurance cover

- any loss, injury and damage caused by or to the Secondee in the course of providing the Services.
- 11.2 During the Secondment Period the Council shall fulfil all duties relating to the Secondee's health, safety and welfare as if it was their employer and shall comply with the PCT's reasonable requests in connection with the PCT's duties in relation to the Secondee.
- 11.3 The PCT shall use its reasonable endeavours to procure that the Secondee shall provide the Services with reasonable skill and care.
- 11.4 The Council shall indemnify the PCT fully and keep the PCT indemnified fully at all times against any loss, injury, damage or costs suffered, sustained or incurred by:
- (a) the Secondee in relation to any loss, injury, damage or costs arising out of any act or omission by the Council or its employees or agents during the Secondment Period; or
 - (b) a third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Secondee in the course of carrying out the Services.
- 11.5 The PCT shall indemnify the Council fully and keep the Council indemnified fully at all times against any claim or demand by the Secondee arising out of their employment by the PCT or its termination during the Secondment Period (save for any claim relating to any act or omission of the Council or its employees or agents).

Part 2: Staff Transfer

Appropriate Pension Provision	<p>With regard to Transferring Employees:</p> <p style="text-align: center;">continued membership of the National Health Service Pension Scheme (NHSPS); or</p> <p style="text-align: center;">pension rights, which are certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the NHSPS;</p>
Effective Date	<p>the date on which the Secondment Period ends and there is a Relevant Transfer of the Transferring Employees under TUPE;</p>
Employee Liability Information	<p>the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE and this Contract, including:</p> <p>(a) the identity and age of the employee;</p> <p>(b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);</p> <p>(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where [the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or] a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two (2) years;</p> <p>(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the Council; and</p> <p>(e) information about any collective agreement that will have effect after the Relevant Transfer in relation to the employee under regulation 5(a) of TUPE;</p>
Employment liabilities	<p>All claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or</p>

	constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;
Transferring Employees	Those employees who are seconded to the Council or are otherwise assigned to the Services who are entitled to transfer to the Council under TUPE;
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

1. Transfer of PCT Employees to the Council

- 1.1. The Council and the PCT agree that where the Council assumes full managerial responsibility for the Transferring Employees, either directly or acting through a service provider, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees shall transfer to the Council or its service provider. The Council shall comply and shall procure that each of its service providers shall comply with their obligations under TUPE.
- 1.2. For the duration of the Term, the PCT's Financial Contributions shall include a sum equal to the Employment Costs in respect of the Transferring Employees which shall include but are not limited to:
- 1.2.1. the Transferring Employee's salary as reviewed by the PCT on an annual basis from time to time, the first such review on [DATE], in line with the policy for the PCT's employees;
 - 1.2.2. other payments and allowances, including travel and subsistence payments;
 - 1.2.3. holiday pay and bonuses;

- 1.2.4. payments of PAYE and national insurance contributions;
 - 1.2.5. any overtime payments made to the Transferring Employees during the Term and approved in advance by the Council; and
 - 1.2.6. the employer's contribution rate payable in respect of the Transferring Employees' continued membership of NHSPS or other appropriate pension scheme, and any shortfall in the transfer amounts applicable to a bulk transfer of pension benefits from the NHSPS into an alternative pension scheme.
- 1.3. The PCT shall indemnify and keep indemnified the Council in respect of any costs, payments or losses incurred by the Council or any relevant sub-contractor in connection with the dismissal for redundancy of any Transferring Employee on or after the Effective Date.
 - 1.4. The PCT shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Council on request. The PCT shall warrant that such information is complete and accurate as at the date it is disclosed, and shall indemnify the Council (and its service providers) against all Employment Liabilities incurred as a result of any employee, other than the Transferring Employees, being deemed to have transferred to the Council.
 - 1.5. The PCT shall indemnify and keep indemnified the Council against any losses, except indirect losses incurred by the Council or any relevant sub-contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the PCT in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Council or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE).
 - 1.6. Subject to paragraphs 1.2 and 1.3, Part 2 of this Schedule 6, the Council shall indemnify and keep indemnified the PCT against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, and any other person who is or will be employed or engaged by the Council or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
 - 1.7. The Council shall or shall procure that any relevant service provider shall ensure that all Transferring Employees are offered Appropriate Pension Provision from the Effective Date.

- 1.8. The PCT shall indemnify and keep indemnified the Council against any costs and liabilities incurred as a result of the Council's compliance with paragraph 1.7 which exceed the amounts allocated for Employment Costs in the PCT Financial Contributions.

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Annex 1: List of Seconded Employees

TO BE INSERTED

Draft

ANNEX 2: Secondment protocol

INTRODUCTION

Throughout this Protocol the following terms and definitions are used

PCT The PCT of the employee(s) prior to any secondment

Council The organisation to whom the employee is seconded.

Parties The Council and The PCT together

Employee The individual employee seconded from the PCT to the Council.

PURPOSE OF THE PROTOCOL

1. This protocol is to be used by the Parties to an Agreement made pursuant to Section 75 National Health Service Act 2006. This Protocol will be attached as an appendix to the Agreement if the secondment of staff is provided for. It sets out the principles and procedures which the Parties shall use wherever it is agreed that there shall be any secondment of staff between the Parties to facilitate Partnership arrangements.
2. The secondment of staff may involve full- or part-time employees. The Employee's contract of employment continues in force with the PCT although some adjustments may be made to lines of accountability and control, to location, to supervision and to other day to day management procedures. Changes may also be made to some aspects of the job description or other contractual provisions but only with the agreement of the Employee concerned. Accordingly each secondment of an individual Employee shall only take effect after the completion of a Secondment Agreement detailing the effects of the secondment upon the individual contract of employment and as provided for in this Protocol.

PARTIES TO THE SECONDMENT PROTOCOL AND AGREEMENTS

3. The Parties to any Agreement made pursuant to Section 75 National Health Service Act 2006 shall incorporate this Protocol as an appendix to that Agreement and the Protocol shall only be amended by agreement between the Parties as provided for in the Agreement. To the extent that such changes shall affect the terms and conditions of any employee such employees shall be consulted in respect of any changes to this Protocol, in such manner as provided for in this Protocol. Individual secondment agreements are tripartite agreements involving the PCT, the Council and the Employee.

4. The parties to any individual Secondment Agreement shall be the PCT, the Employee and the Council.

THE CONTRACT OF EMPLOYMENT

5. The contract of employment existing at the time of the secondment shall continue in force together with all current terms and conditions in so far as they amend or supplement the contract of employment. No changes to the contract shall be made other than as provided for in the individual Secondment Agreement or as may be agreed from time to time between the parties to the contract.
6. The PCT shall retain the responsibility for the issuing of statements of terms and conditions of employment to seconded staff using the appropriate documentation.

TERMS TO BE INCLUDED IN THE INDIVIDUAL SECONDMENT AGREEMENT

7. The individual Secondment Agreement shall make provision for the following matters:
 - a. The date and whereabouts of the Contract of employment and any associated documents and personnel manuals
 - b. The extent to which any changes to that Contract are made and agreed between the PCT and employee
 - c. The location of the employee following secondment
 - d. The length of the secondment
 - e. The name or post of the employee's direct line manager
 - f. Details of any additional provisions or changes affecting accountability, performance management and supervision
 - g. A statement of the effect on the employee of the termination of the Partnership Arrangement to include any redundancy waiver against the Council as referred to in this Protocol.
 - h. Provision for confidentiality and final propriety conditions in so far as they may be affected by the secondment
 - i. An account of arrangements for making changes to the Secondment Agreement
8. The Parties to a secondment Secondment Agreement may agree at any time and in accordance with the Contract of employment to alter any of the terms of the Agreement.

TERMINATION OF CONTRACT OR PARTNERSHIP AGREEMENT

9. The individual Secondment Agreement will automatically terminate on the termination of the Contract of Employment. Upon such termination the seconded employee has the responsibility to return to the organisation to whom they are seconded all documents, goods and/or projects relating to the management and delivery of their work that were either held or created by them during the secondment period.
10. In the event that the relevant Partnership Agreement shall come to an end, terminating the secondment, the contract of employment shall be unaffected and no claim in redundancy or other claim relating to the ending of any contract of employment may be made against the Council. The responsibility for the continuing employment of the Employee remains with the PCT, and there will be no impact on the continuity of employment of the Employee.

ACCOUNTABILITY

11. Seconded employees shall work and discharge their responsibilities as employees within the Council as fully integrated members of its teams or units. They will be managerially and professionally accountable to Managers within the Council as provided for in the Secondment Agreement. This will include accountability for their standards of practice, management of their workloads and day operation of the Council. The Council and the PCT will provide Employees with the information needed to enable this to operate

SUPERVISION AND PERFORMANCE MANAGEMENT

12. All staff will receive appropriate support and supervision. The Council will, as soon as practicable following the secondment, introduce a Supervision and Performance Management Framework, following appropriate consultation. Seconded staff will continue to receive supervision and performance management in line with the requirements of any existing supervision policy until replaced.
13. All seconded staff will undertake their formal supervision and performance management with their Team Manager/Line Manager in the Council. Where the Team/Line Manager is from a different professional background, for professionally-qualified employees, the employee will have a named person, who holds a recognised relevant professional qualification, to act as a professional mentor and provide practice supervision. This person will support and advise on professional issues and support the Line Manager and member of staff in the Performance Review/Management process.

14. Seconded Managers/Team Managers/Senior Practitioners will be designated to provide support and advice on professional development to qualified staff regardless of whether or not the employee is a member of their immediate team. In addition, professional support and supervision from designated persons within the PCT may be provided so as to ensure that key policy and legislative requirements continue to be met by staff within these services. Professional development needs, identified through the Supervision and Performance Management process, will be fed back to a nominated person within the PCT and will be met by the PCT.
15. The training and development needs of all seconded staff for the performance of the tasks required, will be identified by the Council organisation and will be met by its training and development plans. Professional development needs and training will continue to be met by the PCT.
16. The PCT and the Council shall develop and maintain arrangements for monitoring and reviewing all training and development needs of all seconded employees.

CONFIDENTIALITY AND FINANCIAL PROPRIETY

17. All seconded staff shall be informed of and be bound by the rules on the maintenance of the confidentiality of documents and information acquired, produced or to which access is gained during the course of employment as are applied to the employees of the Council. This obligation shall continue to bind the Employee after the ending of the secondment.
18. Where a seconded employee is responsible for the management of money, accounts, bills, or any other aspect of work concerning financial matters they will be informed of and be bound by the Standing Financial Instructions, standing orders on contracts, staff guidance and associated procedures of the Council.
19. In undertaking such duties seconded employees should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and the achievement of value for money. Policies and Rules adopted by the PCT and the Council will apply. Any such documents shall be exchanged between the PCT and the Council.
20. The Parties agree to protect any personal data held on seconded staff and otherwise comply with their respective obligations in accordance with the Data Protection Act 1998.

PAYMENT OF SALARIES AND EXPENSES

21. Payroll Services including tax and pension contributions and claims for expenses for seconded staff will remain the

responsibility of the PCT. The Parties may consider changing these arrangements following consultation with employees and their representatives of recognised Trade Unions.

WORKFORCE INFORMATION

22. Workforce information regarding the seconded employees will continue to be collected and retained by the PCT. To the extent that the Council may require data concerning seconded employees in order to support the planning and delivery of services the PCT shall, in accordance with such format and deadlines as are agreed between the parties, provide this information.

REPLACEMENT OF SECONDED STAFF

23. From the commencement of the secondment arrangements the provision of administrative services to support the recruitment and selection process of employees to posts relating to seconded employees will be undertaken by the Council.
24. The recruitment procedures for the replacement of seconded staff shall be those of the Council.
25. Appointment Panels for senior posts will include appropriately qualified/experienced representatives from both Parties. To be appointed, applicants must be assessed as competent to meet the minimum professional standards as defined in the job specification and as judged by the member(s) of that profession on the Appointment Panel.

DISCIPLINARY AND APPEALS PROCEDURES

26. In the absence of any joint Disciplinary Policy and Procedure between the parties the procedures of the PCT shall apply. The Parties undertake to ensure that their respective officers fully co-operate in any disciplinary matters relating to either directly employed or seconded staff, including the provision of such information as may be required by the PCT and attendance at any hearing provided for in the relevant procedures.

GRIEVANCES AND COMPLAINTS

27. A grievance by seconded employees relating to the practice, procedure, management or supervision within the Council will be dealt with, in the first instance (that is up to the level at which the matter is to be dealt with by the line manager) by the Council but otherwise in accordance with the PCT's grievance procedures. Should the grievance go beyond the informal stage the matter will be dealt with by the PCT and the Council shall ensure that its officers fully co-operate with

such processes, including the attendance at any hearing as may be provided for in those procedures.

28. A grievance brought by seconded staff related to their terms and conditions of employment will be dealt with by the PCT.
29. All seconded employees shall have access to a confidential reporting procedure (whistle blowing policy) maintained by the Council, as well as to that of the PCT.

MANAGEMENT OF CHANGE

30. In the event that seconded staff are affected by organisational change within either of the Parties the seconded employees shall be treated in accordance with the PCT's Policy and guidelines for dealing with Organisational Change.
31. Seconded staff will have the right to return to a substantive post if the Agreement comes to an end. If the substantive post is to terminate or is placed at risk during the secondment period, the PCT's policy and guidelines for dealing with Organisation Change will be complied with, ie consultation will take place with the recognised Trade Union and the employee and his/her representative and suitable alternative employment will be considered.
32. The Parties shall ensure that suitable public liability and employer's liability insurance is in force to cover the secondment arrangements and any additional liabilities associated with the arrangements and any liabilities the Parties need to address during the period of the Agreement.

CONFLICTS OF INTEREST

33. Seconded employees shall declare and seek agreement from both their line manager and the Head of service within the PCT, with regard to any interests, financial or otherwise, which may give rise to conflicts of interests during the course of their secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and any connection with a voluntary or other body contracting for services connected with the Parties.

REVIEW

34. This Protocol shall be subject to termination, review, amendment or renewal in accordance with the provisions of the Agreement.

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TEMPLATE SECONDMENT AGREEMENT

Secondment Agreement Health Act Partnerships

Between
West Sussex Primary Care Trust (the PCT)
And
West Sussex County Council (the Council)
And
..... **(the Employee)**

This agreement is dated the Day of 20...

This agreement sets out the terms and conditions of the secondment of (name of secondee) who is employed as a(job title) at the grade of from West Sussex Primary Care Trust (the PCT) to West Sussex County Council (the Council).

This agreement is to be read alongside the Contract of Employment for the Employee which is dated together with the additional contractual documents amending or adding to that contract and referred to in the Personnel File relating to the Employee and held by the PCT.

This agreement is to be read alongside the Secondment Protocol agreed by the PCT and the Council and which has been read by the Employee (referred to as the Protocol).

1. THE SECONDMENT

- 1.1 The Employee will be based at
- 1.2 The Employee is contracted to work for Hours per week.
- 1.3 The secondment will begin on And last for a period of [INSERT PERIOD] unless terminated before that date in accordance with arrangements provided in the Protocol. The secondment will be reviewed at or during that time and it may continue thereafter on an annual basis or for some other agreed term.
- 1.4 While on secondment the line manager for the Employee will be (name and post). This may be changed in future but not without prior notice to the Employee.

2. SUPERVISION AND PERFORMANCE MANAGEMENT

- 2.1 Supervision and performance management will be undertaken in accordance with the Secondment Protocol. The Employee will be notified of the name of the officer

responsible for supervision and performance management and shall be provided with an explanation of the process.

3. PROFESSIONAL DEVELOPMENT

- 3.1 The Employee's professional development will remain the responsibility of the PCT and will be maintained in accordance with the arrangements currently in place. The officer responsible for managing the Employee's professional Development shall be notified to the employee.

4. SALARY AND RELATED ISSUES

- 4.1 During the Secondment, the Employee will continue to be paid by the PCT and will receive any subsequent pay increases to which s/he is entitled in accordance with the terms of the Contract of Employment.
- 4.2 The PCT will be responsible for the payment of travel and subsistence in accordance with the conditions in place and the Contract of Employment.
- 4.3 Service while on secondment will count as continuous service with the PCT.
- 4.4 The Employee will remain in the NHS pension scheme if already a member and will remain eligible to join the scheme if eligible in accordance with the rules applying to the scheme.
- 4.5 Any changes to these arrangements will be made only after consultation with the Employee.

5. LEAVE AND SICKNESS ABSENCE

- 5.1 The Employee will retain his/her normal entitlement to annual leave and any public and bank holidays. The current entitlement is* days or hours per leave year and is inclusive of additional or statutory days. The leave year runs from 1st April to 31st March. Annual leave requests throughout the period of the secondment will be subject to the approval of the line manager.
- 5.2 The Employee will remain subject to the PCT's occupational sick pay scheme. Any certificates of incapacity should be provided to the line manager.

6. CONDITIONS OF SERVICE

- 6.1 While on secondment, the Employee remains an employee of the PCT and the rules on conduct and discipline and all national and Local Tenus and conditions of employment which are current and which may be amended from time to time will apply to the Employee during the period of secondment.

- 6.2 Subject to the above paragraph, the Employee will conduct her/himself as if s/he were a substantive employee of the Council and will be expected to fully co-operate in the application of the Council's policies, procedures and practices, as instructed and informed by the line manager.
- 6.3 The employee will be bound by the rules on financial propriety of the Council which are in place as amended from time to time.

7. MANAGEMENT OF CHANGE

- 7.1 The terms of this agreement may only be varied by the agreement in writing of the parties to this agreement or their representatives.
- 7.2 Any organisational restructuring and/or changes in employment undertaken by either the PCT or the Council will be conducted in accordance with the Secondment Protocol.

8. DISCIPLINE AND GRIEVANCE

- 8.1 During the course of the secondment the PCT's Disciplinary and Appeals Procedures will continue to apply to the Employee.
- 8.2 During the course of the secondment the PCT's Grievance Policy and Procedure will continue to apply save that at any informal stage and up to any stage of grievance which may be dealt with by the Employee's line manager, the grievance shall be referred to the line manager within the Council. Any change to the Employee's named Grievance Officer will be notified to the Employee.

9. CONFIDENTIALITY AND DATA PROTECTION

- 9.1 In addition to the provisions within the contract of employment, the Employee is under an obligation not to disclose, during or after the secondment, any confidential information to which s/he becomes privy during the course of the secondment.
- 9.2 The Employee consents to the PCT providing relevant information about the Employee to the Council in connection with the secondment [and, in particular, to it providing [DETAIL ANY SENSITIVE PERSONAL DATA] to the Council to enable it to [DETAILS]].

10. REDUNDANCY WAIVER

- 10.1 Should the secondment agreement expire or not be extended, the Employee will not acquire any rights to any redundancy payment or other benefits arising from the ending of the secondment due from the Council. The

employment of the Employee will continue with the PCT and there will be no effect on their continuity of employment.

10.2 The secondment shall not operate as a fixed term contract for the purposes of S197 of the Employment Rights Act 1996.

11. CONFLICTS OF INTEREST

11.1 Seconded Employees shall declare and seek agreement from their line manager and the Head of Service of their PCT, in respect of any interests, financial or otherwise, which may give rise to conflict of interest during the course of their secondment.

Signed **(WSCC Representative)**

Print name **Date**
.....

Signed **(PCT Representative)**
Date

Signed **Employee**

Print name **Date**
.....

SCHEDULE 7
PREVIOUS PARTNERSHIP AGREEMENTS

The following list previous Partnership Agreements intended to be a part of the Partnership Agreement 2011

The following list previous Partnership Agreements intended to be a part of the Partnership Agreement 2011

Mental Health

The current section 75 Agreement which includes elements of Sussex Partnership Foundation Trust Contract (excluding CAMHS and OPMH), services provided to West Sussex service users by Surrey and Borders Partnership Trust (excluding CAMHS and OPMH) and the following third sector contracts:

1. SOHA Contract 2009-2012
2. Southdown Contract 2010-2013
3. Stonepillow Contract 2010-2011
4. United Response Contract 2009-2011
5. West Sussex Carers Support Partnership Contract 2009-2012
6. Worthing and Arun MIND Contract 2009-2012
7. CAPITAL Contract 2010-2011
8. Shoreham District Mental Health Association Contract 2009-2012
9. Brighton and Hove MIND Contract 2009-2012
10. Richmond Fellowship Contract 2009-2012
11. MIND Western CIC Contract 2009-2012

Also included are Mental Health Continuing Healthcare placements for Working Age Adults as well as MH Residential and Community Care placements.

Learning Difficulty

The current section 75 Agreement which includes contracts as outlined below:

Service area	Provider
LD Health Services	Sussex Partnership NHS FT
LD Health Facilitation	Sussex Community Health NHS Trust
LD Supported Living	
APTL - Boundary, Alinora, St Botolphs	Southdown
APTL - Post Office	Southdown
APTL - Haywards Heath	Mencap
APTL - Dogwood	Outreach 3 Way
APTL - Lennox, Magdalene, Hartland, Police	Southdown

Bradbury Court	Southdown
APTL Swinburne Court	Outreach 3 Way
Supported Living Service - Main	WSCC
LD Employment	
LD employment service	Aldingbourne Trust
LD Advocacy	
Citizen and Self Advocacy Service	Impact
LD Residential	
Hammonds	WSCC
Stanhope - main	WSCC
Stanhope - ISU	WSCC
Tozer	WSCC
Ball Tree Croft	WSCC
Hobbs Field	WSCC
Manor	Manor
LD Respite	
Queens Lodge	Outreach 3 Way
Stanhope Main	WSCC
Stanhope Emergency	WSCC
Stanhope ISU	WSCC
Hammonds	WSCC
Service area	Provider
Tozer	WSCC
LD Carers Services	
Carers support Service North and Mid Sussex	Carers support Service North and Mid Sussex
Carers support Service Chichester and District	Carers support Service Chichester and District
Carers support Service Worthing and District	Carers support Service Worthing and District
LD Day-care	
The Acorn	Aldingbourne Trust
Aldingbourne Country Centre	Aldingbourne Trust
Appledram Centre	Appledram Centre
Rife Way	Ferring Country Centre
Brook Lane	Ferring Country Centre
Work Matters	Outreach 3 Way
Standard	Outreach 3 Way
High Support	Outreach 3 Way
Hoathly Hill	Pericles
High Need	Worthing Scope
Medium Need	Worthing Scope
Wrenford	WSCC
Strawford	WSCC
Coastal Enterprises	WSCC

Burnside	WSCC
The Pines	WSCC
The Oaks	WSCC
Coastal Workshop Rustington	WSCC
Shared Lives	
Main Scheme	WSCC
SCS (Associates)	WSCC
Short Breaks	WSCC
Sports/Leisure Support Service	Outreach 3 Way

Mental Capacity Act/Deprivation of Liberty

The current section 75 Agreement which includes 20% NHS investment for the Deprivation of Liberty Safe Guards team, approximately 7K for section 12 doctors, and doctors registered under section 12 of the Mental Health Act 1983 payment for assessments (from the Primary Care budget 'collaborative arrangements' allocated budget not known) and training for the mental capacity act for registered hospitals.

Telecare Services

The current section 75 Agreement which provides thirteen (13) week telecare services to support hospital discharge and/or prevent hospital admission

SCHEDULE 8

PRIMARY CARE TRUST CONTRACTS

The following lists PCT contracts that are intended to transfer to West Sussex County Council pursuant to the new section 75 arrangements

The list will be subject to such written variations as the parties may agree from time to time

The PCT appoints the Council as agency to manage these contracts from the commencement date of the Agreement

SERVICES FOR CHILDREN

1. The provision of services for children contained within the Sussex Community Service Contract including Chailey.
2. Contract with Western Sussex Hospital for the Child Development Centre (and associated clinical services) at Worthing
3. The provision of CAMHS service contained within the Sussex Partnership Trust Contract
4. Children's Community Nursing Service in Mid Sussex at Brighton and Sussex University Hospital Trust Contract
5. Provision of health visiting services by Surrey Community Health NHS Trust for the Clerklands practice.

[Sussex Community NHS Trust](#)[Sussex Community NHS Trust](#)

CARERS

1. West Sussex Carers Support Partnership Contract 2010-2012

(Various overarching partnership agreements between the 2 organisations, with the county council as signatory on the contract eg Short Term Break Services (Agreements with British Red Cross and MIND). These are agreements managed in the County Council)

MH Carers services contract is already part of this agreement and is listed above.

MENTAL HEALTH

The OPMH and CAMHS components of the Sussex Partnership Foundation Trust Contract and OPMH and CAMHS services provided to West Sussex service users by Surrey and Borders Partnership Trust.

Also included will be all OPMH Mental Health Continuing Healthcare placements.

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